



# City of Des Moines

OFFICE OF THE CITY ATTORNEY  
21630 11TH AVENUE SOUTH, SUITE C  
DES MOINES, WASHINGTON 98198  
(206) 870-6553 FAX (206) 870-6872



RECEIVED

JUN 10 2015

CITY OF DES MOINES  
CITY CLERK

June 10, 2015

David C. Elliott  
21405 4th Avenue S.  
Des Moines, WA 98198

## CITY ATTORNEY'S CERTIFICATE OF REVIEW

This memorandum shall serve as the City Attorney's "certificate of review" under Des Moines Municipal Code 1.16.060 for Petitioner David C. Elliott's proposed Initiative.

On May 26, 2015, Petitioner David C. Elliott (21405 4<sup>th</sup> Ave. S., Des Moines, WA) filed a proposed Initiative (**Exhibit 1**) with the City Clerk pursuant to DMMC 1.16.050.<sup>1</sup> The proposed Initiative seeks to amend Ordinance 1611 which regulates the "cutting and removal of trees" passed by the Des Moines City Council on November 13, 2014. On May 27, 2015, the City Clerk submitted a copy of the proposed Initiative to the City Attorney and notified the Petitioner of the submittal as required by DMMC 1.16.060.

### City Attorney's Duties

The City Attorney has the following obligations with regards to a properly filed initiative:

...Upon receipt of the measure, the city attorney may confer with the petitioner and shall within 10 working days from receipt thereof<sup>2</sup> review the proposal for matters of form and style<sup>3</sup>, and such matters of substantive import as may be agreeable to the petitioner, and shall recommend to the petitioner such revision or alteration of the measure as may be deemed necessary and appropriate. The recommendations of the city attorney shall be advisory only, and the petitioner may accept or reject them in whole or in part. The city attorney shall issue a certificate of review certifying that he/she has reviewed the measure for form and

<sup>1</sup> Chapter 1.16 DMMC, Initiative and Referendum Powers, is attached in its entirety. Exhibit 2.

<sup>2</sup> June 10, 2015 is ten working days from May 27, 2015.

<sup>3</sup> The Initiative as filed by the Petitioner was not in proper legislative format. The City Attorney's Office, pursuant to DMMC 1.16.060, reviewed the Initiative and edited the document for form and style so that the document conforms to the Des Moines drafting standards and is in proper legislative format. This corrected document is being provided to the Petitioner with this Certificate. Exhibit 3. The style and form of Ordinances in the City of Des Moines is governed by a manual entitled *Legislation Drafting Standards, City of Des Moines, Washington, Revised May 29, 2013*.



style and that the recommendations thereon, if any, have been communicated to the petitioner, and such certificate shall note whether or not the petitioner accepts the recommendations of the city attorney. DMMC 1.16.060.

Pursuant to DMMC 1.16.070:

[w]ithin five working days after issuance of a certificate of review by the city attorney, the petitioner, if he/she desires to proceed with sponsorship of the measure, shall file the measure together with the certificate of review with the city clerk for assignment of a serial number...

After receipt of the measure and the certificate of review from the Petitioner:

...the city attorney shall formulate and transmit to the city clerk, a concise statement posed as a question ("ballot title") and not to exceed 25 words, bearing the serial number of the measure and a summary of the measure, not to exceed 75 words, to follow the statement. DMMC 1.16.080.

### Background

The City of Des Moines is situated in South King County and borders I-5 to the east, Puget Sound to the west, the cities of Normandy Park and SeaTac to the north and Federal Way to the south. The City is approximately 5 miles long but only 1.5 miles wide. Compared with many cities that are roughly the same square mileage as Des Moines, Des Moines has a disproportionately large number of geological hazard areas, critical areas, and shoreline areas;<sup>4</sup> all of which are subject to regulation by various federal and state agencies and are also highly regulated by the State Departments of Commerce, Ecology and Natural Resources. Because the City contains such a disproportionately large amount of geologically hazard areas and an extensive shoreline, the City also has a disproportionately large number of landslides.<sup>5</sup>

Title 16 of the DMMC entitled "Environment" contains the City's SEPA Ordinance (chapter 16.05 DMMC), Critical Areas Ordinance (chapter 16.10 DMMC), Flood Hazard Ordinance (chapter 16.15 DMMC), Shoreline Master Program Ordinance (chapter 16.20 DMMC) and now the City Tree Ordinance (chapter 16.25 DMMC). All Ordinances (including Ordinance 1611) that effect shorelines, critical areas, geologically hazardous, etc. are subject to review and approval by various state departments.<sup>6</sup>

---

<sup>4</sup> Critical Areas Map, Exhibit 4

<sup>5</sup> June 5, 2015 Landslide Activity – General History Letter, Exhibit 5

<sup>6</sup> See Attached Department of Commerce "Review Team" comments on the City proposed Tree Ordinance dated April 23, 2014, Exhibit 6.



As stated in Title 16:

The purpose of this Title is to implement the State Environmental Policy Act, the critical area requirements of chapter 36.70A RCW, the floodplain management provisions of chapter 86.16 RCW, and the State Shoreline Act as set forth in chapter 90.58 RCW. DMMC 16.01.010.

The Title was adopted “pursuant to chapters 43.21C, 36.70A, 86.16, and 90.58 RCW and other applicable laws.” DMMC 16.01.040.

### Ordinance 1611: Trees

The purpose of the proposed initiative is to amend Ordinance 1611 relating to the “cutting and removal of trees” adopted by the Des Moines City Council on November 13, 2014.

Ordinance 1611 was enacted to bring all “tree” related matters into one chapter and to comply with the City’s obligations pursuant to the Growth Management Act, the Shoreline Management Act and the State Environmental Policy Act with regards to protection of critical areas and other environmental concerns as required by state and federal law.<sup>7</sup> The Ordinance was adopted “pursuant to the authority set forth in chapters 36.70A, 36.70B and 36.70C RCW and other applicable laws”<sup>8</sup> and is primarily codified in Title 16 DMMC “Environment”.

The Ordinance’s purpose is expressly stated in DMMC 16.25.030:

These regulations are adopted to promote the public health, safety and general welfare of the citizens of Des Moines, including minimizing erosion, siltation and water pollution, surface water and ground water runoff, risks of landslides, and the need for additional storm drainage facilities; preserving trees for the reduction of noise, wind protection, slope stabilization, animal habitat, and reduction in air pollution; removing dead, diseased, or hazardous trees; implementing the City’s Comprehensive Plan; providing for the delivery of reliable utility service; and reasonable development of property.

The Ordinance pulled three sections of the DMMC into the Tree Ordinance; Ordinances 1583, 1591, and 1611. Ordinance 1583 was adopted on October 24, 2013 and states as its Authority:

This Title is adopted pursuant to chapters 43.21C, 36.70A [Growth Management Act], 86.16 RCW, and 90.58 RCW and other applicable laws.

---

<sup>7</sup> November 13, 2014 Council Packet, Exhibit 7

<sup>8</sup> DMMC 16.25.030, Exhibit 8



Ordinance 1591 was adopted on January 20, 2014 and states as its Authority:

The Title is created pursuant to the authority set forth in RCW 35A.63 and RCW 36.70A [Growth Management Act], RCW 36.70B, and RCW 36.70C and other applicable laws.

Ordinance 1611 was adopted on November 13, 2014 and states as its Authority:

This chapter is adopted pursuant to the authority set forth in chapters 36.70A, 36.70B and 36.70C RCW and other applicable laws.

Ordinances 1583, 1591 and 1611 were reviewed by the Washington State Department of Commerce as required by the Growth Management Act.

Specifically the Ordinance regulates tree cutting, pruning, etc. in critical areas, shorelines areas, required landscaping areas, trees on private developed or partially developed lot where the total area to be cleared is 2,000 square feet or greater, city-owned property and city right of way. No tree permits are required to remove, cut, or prune trees on private developed or partially developed lots if the trees are *outside* of environmentally critical areas, shoreline areas, and associated buffer areas, trees are *not* part of a required landscape area; and the total area to be cleared is *less than 2,000 square feet*.<sup>9</sup>

The Ordinance was passed only after it was processed in accordance with the State Environmental Policy Act (chapter 43.21C RCW) reviewed by the Washington State Department of Commerce as required under the Growth Management Act (chapter 36.70A RCW), considered by the City Environment Committee and voted on by the City Council at a public hearing with extensive public participation.

#### Ordinances Enacted to Comply with the Growth Management Act are Beyond the Scope of Initiative Power

The City has adopted the *Initiative and Referendum Guide for Washington Cities and Charter Counties*, (hereinafter "*User's Guide*") dated April 2015, prepared by the Municipal Research Services Center. Case law has established that ordinances enacted to comply with the Growth Management Act are beyond the scope of the initiative powers.

#### **Can ordinances that pertain to the Growth Management Act be enacted by initiative?**

No. Any ordinance related to the GMA is not subject to the powers of initiative as well, because the legislature specifically delegated the power to act under GMA to the legislative authority of a city or county and not to the corporate entity. (*User's Guide*, # 20 at p. 27, Exhibit 9).

---

<sup>9</sup> Exhibit 4 identifies areas potentially subject to critical area permits



A summary of the case law in this area is provided in the *User's Guide* at p. 5-10. The *User's Guide*, at pages 9 through 10, specifically addresses ordinances implementing the Growth Management Act and states:

The power to enact regulations under the Growth Management Act (GMA), chapter 36.70A RCW, is specifically granted to the legislative authority of cities and counties. As summarized in the following cases, the courts have addressed the use of initiative and referendum when related to the GMA in a number of cases and have found that the powers are invalid when pertaining to a regulation adopted under the act.

The *Guide*, at pages 28 through 35, concludes by stating:

As these cases make clear, the powers of initiative and referendum do not apply to ordinances adopted pursuant to the Growth Management Act..

We have found no cases to the contrary.

#### Conclusion

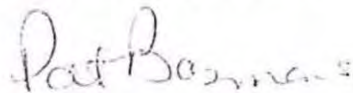
Ordinance 1611 places controls on development and land use regulations and was adopted pursuant to the GMA.

Allowing cities to enact development regulations outside the requirements of the GMA defeats the comprehensive nature of the GMA and serves to frustrate its purposes. All enactments that fall under the GMA definition of development regulations are subject to the requirements of the GMA. The proposed initiative is in conflict with the GMA and is therefore an invalid exercise of the initiative power.

The City Attorney will advise the City Clerk, pursuant to DMMC 1.16.190(1)(d), to refuse to file any initiative petition being submitted because the initiative petition proposes an action which is not subject to the initiative process as determined by the legal opinion of the City Attorney.

Sincerely,

CITY OF DES MOINES



Pat Bosmans

City Attorney

Encls.

cc: Bonnie Wilkins, City Clerk



### Documents and Exhibits

The City Attorney has reviewed the following documents:

- Exhibit 1 Initiative Petition provided to the City by David C. Elliott;
- Exhibit 2 Chapter 1.16 DMMC
- Exhibit 3 Ordinance No. 1611 with Elliott Proposed Initiative Language and City's Corrected Drafting Format;
- Exhibit 4 Critical Areas Map
- Exhibit 5 June 5, 2015 Landslide Activity – General History Letter
- Exhibit 6 Attached Department of Commerce “Review Team” comments on the City proposed Tree Ordinance dated April 23, 2014
- Exhibit 7 Council Packet dated November 13, 2014 and the following attachments:
  - 1. Substitute Draft Ordinance No. 14-043-A related to the Tree Regulations
  - 2. October 2, 2014 Council Agenda (without Attachments)
  - 3. Potential Amendments
  - 4. 11/6/14 PowerPoint Presentation to the Environment Committee
  - 5. City Attorney Memos to Councilmembers
  - 6. Department of Commerce “Review Team” Comments
  - 7. Relevant City Goals, Policies, and Strategies on Environmental Protection
  - 8. Coppicing Information
  - 9. Range of Potential Fees
- Exhibit 8 Chapter 16.25 DMMC;
- Exhibit 9 *Initiative and Referendum Guide for Washington Cities and Charter Counties*, dated April 2015 and the case law referenced therein



# **EXHIBIT 1**



Initiative to People of Des Moines

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON revising and updating City of Des Moines regulations relating to the cutting, trimming and removal of trees on private developed sites, private undeveloped sites, public properties, City-owned property and right-of-way, and environmentally critical areas; adding and codifying a new chapter entitled "Trees" to Title 16, amending chapters 14.20, 16.01, and 18.195 of the Des Moines Municipal Code (DMMC) to add new definitions and development regulations, repealing DMMC 18.195.130 and section 424 of Ordinance No. 1591.

WHEREAS, On November 6, 2014 the City Council of the City of Des Moines adopted Ordinance 14-043 (Trees), later codified as Chapter 16.25 of the DMMC and

WHEREAS, Ordinance 14-043 and now the DMMC imposes severe constraints on tree cutting and trimming in residential areas including excessive permit and processing costs, and

WHEREAS, Ordinance 14-043 and now the DMMC fails to recognize that in Des Moines tree trimming and cutting is largely routine vegetation maintenance performed to maintain quality of life that is performed periodically, and

WHEREAS, The drafters of Ordinance 14-043 did not produce facts to show a public problem that needs to be eliminated or a public benefit to the ordinance.

WHEREAS, this initiative complies with the Growth Management Act, and

WHEREAS, The people of the City of Des Moines are intelligent, independent, and capable of determining when and how to trim their own trees and have exercised prudent tree trimming practices for decades, frequently in coordination with their neighbors, now therefore,

WHEREAS,  
THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Chapter 16.25 Trees shall be amended as follows:

Sec. 1. Title. This chapter shall be entitled "Trees".

Sec. 2. Application. This chapter shall apply to the removal, cutting, and pruning of trees within the City of Des Moines.

Initiative  
Page 2 of 15

Sec. 3. Purpose. These regulations are adopted to promote the public health, safety and general welfare of the citizens of Des



~~Moines, including minimizing erosion, siltation and water pollution, surface water and ground water runoff, risks of landslides, and the need for additional storm drainage facilities, preserving trees for the reduction of noise, wind protection, slope stabilization, animal habitat, and reduction in air pollution, removing dead, diseased, or hazardous trees, implementing the City's comprehensive plan, providing for the delivery of reliable utility service, and reasonable development of property.~~

**Sec. 4. Authority.** ~~This chapter is adopted pursuant to the authority set forth in chapters 36.70A, 36.70B and 36.70C RCW and other applicable laws.~~ From and after March 19, 1976, the city shall have all the powers of a nonchartered code city under the council-manager plan of government and shall in all applicable respects be governed by the provisions of Title 35A RCW. [Ord. 385 § 3, 1976.]

**Sec. 5. Permit - Requirements.**

(1) No tree permit, or grading and clearing permit required. Except as otherwise provided in subsection (2) of this section, no tree permit, or grading and clearing permit is required to remove, cut, or prune trees on private developed, partially developed, or undeveloped lots as follows:

(a) Trees located outside of environmentally critical areas, shoreline areas, and associated buffer areas as verified by the City or qualified professional;

(b) Trees that are not part of a required landscaping area;  
and

(c) The total area to be cleared is less than 2,000 square feet; and

~~(d) An exemption from a tree permit does not exempt a property owner from complying with policies, criteria and standards contained in this chapter or other applicable local, state or federal regulations or permit requirements.~~

(2) Tree permit required. Except as exempted in subsection (3) of this section, a tree permit is required to remove, ~~cut, or prune~~ trees as follows:

(a) Trees that are larger than small trees located within a critical area or shoreline area, or associated buffers.

(b) Trees located within a required landscaping area, unless replaced at a ratio of 2:1.

(c) Trees located On a private developed, partially developed, or undeveloped lot where the total area to be cleared is 2,000 square feet or greater.

(d) Trees located on City-owned property.

(e) Trees located on City right-of-way.

(3) Exemptions. The following situations are exempt from obtaining a tree permit that would otherwise be required under this section:

(a) ~~Dead, diseased or hazard trees, as determined and/or verified by the City or as determined by a certified arborist, that are located outside of critical areas, shoreline areas and associated buffers.~~

(b) Emergency. A tree may be removed without first obtaining a tree permit in an emergency situation involving immediate danger to life or property provided the City is notified within seven days of the tree being cut, is provided such additional information as the City requests in order to verify the emergency, and an after-the-fact tree permit is obtained within twenty days following the cutting of the tree, if a permit would be have otherwise been required.

~~(c) Exemption from the permit requirements of this chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this Code or any other laws or ordinances of the City.~~

~~(3) Other permits required. Other permits may be required as follows:~~

~~(a) Removing, cutting, Or pruning of trees located within environmentally critical areas or the associated~~



~~buffer shall be reviewed in accordance with the environmentally critical areas regulations codified in chapter 16.10 DMNC.~~

~~(b) Removing, cutting, or pruning of trees located within shoreline environments or the associated buffer shall be reviewed in accordance with the shoreline master program codified in chapter 16.20 DMNC.~~

~~(c) Removing, cutting, or pruning of trees in a required landscaping area are subject to the Landscaping and Screening provisions codified in chapter 18.195 DMNC, and/or the requirements identified on the Final Plat.~~

~~(d) Removing, cutting, or pruning of trees located within the City right of way shall be reviewed in accordance the Use and Maintenance of Public Rights of Way provisions codified in chapter 12.05 DMNC.~~

~~(e) Removal, cutting, or pruning of trees that results in a total area of disturbance greater than 2,000 square feet shall be reviewed in accordance with the land clearing, grading, and filling provisions codified in chapter 14.20 DMNC.~~

**Sec. 6. Tree removal, cutting, and pruning limitations.** In addition to the ~~Best Pruning Practices~~ **Tree Permit Requirements** provisions codified in section 7 5 of this Ordinance, the following limitations shall apply to removing, cutting, and pruning of trees:

(1) Trees on private developed, partially developed, or undeveloped lots. No limitations other than a tree permit ~~is if~~ required where the total area to be cleared is 2,000 square feet or ~~greater~~ smaller.

(2) Trees on City-owned property.

~~(a) Removal of dead, diseased or hazard trees as determined and/or verified by the City or as determined by a certified arborist;~~

~~(b) Removal of small trees;~~

~~(c) Tree pruning that does not remove more than 25 percent of a trees total leaf area,~~

There shall be no removal of significant trees, provided unless that the removal of significant trees is subject to combined with tree replacement at a ratio of 3:1.

~~(3) Trees on City right of way. Tree pruning does not remove more than 25 percent of a trees total leaf area.~~

~~**Sec. 7. Best pruning practices.** Tree pruning shall conform to the International Society of Arboriculture standards, or other standards approved by the Department of Natural Resources (DNR) and/or the Department of Ecology (DOE), to maintain trees within environmentally critical areas and shoreline areas in a healthy and safe condition.~~

**Sec. 8. Tree replacement.**

(1) Replacement trees - Number. Any tree identified to be retained that is removed, destroyed or damaged shall be replaced by the applicant on the subject property at a ratio of 3 2:1.

(a) Replacement trees shall be a minimum size of eight feet in height for evergreen trees, and two inches in caliper for deciduous, ~~and shall be approved by the Planning, Building and Public Works Department.~~ The Planning, Building and Public Works Department may approve smaller trees if it determines they are of specimen quality.

(b) Trees shall be provided in addition to any street trees required under chapter 12.15 DMMC. ~~The exact type and location of street trees shall be determined by the Planning, Building and Public Works Department.~~

(2) Maintenance of replacement trees. The applicant shall maintain all replacement trees in a healthy condition. The applicant shall be obligated to replant any replacement tree that dies, or becomes diseased.



**Sec. 9. Tree removal permit - Application.** An application for a tree permit shall be submitted on a form provided by the City and shall include the following information:

(1) General information.

(a) The applicant shall give the name, address and telephone number of the applicant and owner of the property and the street address;

(b) The applicant must provide information on the proposed location, species, diameter and number of trees proposed to be removed ~~cut or pruned~~; and

~~(c) The applicant must agree to pay all costs of cutting, pruning, removing debris, cleaning, and any traffic control needed.~~

(d) If the applicant is not the owner of the property, a notarized an authorization by the property owner consenting to the tree ~~cutting~~ removing activity shall be provided.

~~(2) Plan sheet specifications. All plan sheets will contain the following information:~~

~~(a) The date, basis, and datum of the contours, which shall be referenced to the City's network of benchmarks, if applicable;~~

~~(b) Date, north arrow, and adequate scale (1:10, 1:20, or 1:40) on all maps and plans;~~

~~(c) Contours will be at two-foot contour intervals;~~

~~(d) Contact information for the applicant and the property owner, and legal description of the property;~~

(3 2) Temporary Erosion and Sedimentation Control Plan.

(a) Sequence for tree removal ~~and other land-disturbing~~ activities;

(b) Schedule for installation and removal of all temporary erosion and sediment control measures, including vegetative measures; and

(c) An outline of the methods to be used in removing and disposing of trees. ~~clearing vegetation and disposing of the cleared vegetative matter.~~

~~(4) The applicant shall have an executed hold harmless and release agreement on a form approved by the City, indemnifying and releasing the City, its officials, officers, and agents from liability.~~

~~(5) Other information as deemed necessary by the code official.~~

(3) The Department of Planning Building and Public Works shall issue or deny, with reasons stated, a tree permit within 60 days of application, or a permit shall be deemed issued.

#### Sec. 10. Permit - Expiration - Extension.

(1) Except when specific time limits are set by the City Manager or the City Manager's designee, any permit granted under this chapter shall expire one year from the date of issuance.

~~(2) The City Manager or the City Manager's designee may set specific limits to the project commencement and/or completion for any reasonable purpose, including but not limited to environmental reasons or for coordination with other permitted site work.~~

(3 2) Upon a showing of good cause, a permit may be extended for six months.

(3) Approved plans shall not be amended without authorization of the City Manager or the City Manager's designee.

**Sec. 11 . Tree permit to be posted.** No work shall commence until a permit notice has been posted on the subject site at a conspicuous location. The notice shall remain posted until the project has been completed.

**Sec. 12. Fees.** There shall be a fee assessed to compensate the City for the expense of reviewing and processing plans, conducting inspections, ~~providing for outside consulting services,~~ and the like. The fee shall be set by written



administrative directive and shall be related to the amount of anticipated service for the particular application. Fees for permits authorized under this chapter that are reviewed after the proposed site work has started will be assessed at twice the normal rate, except for emergency exemption established in section 5 of this Ordinance.

Sec. 13. DMMC 16.01.050 and section (5) of Ordinance No. 1583 are amended to add the following definitions:

~~"Certified arborist" means an individual who has achieved a level of knowledge in the art and science of tree care through experience and by passing a comprehensive examination administered by the International Society of Arboriculture or urban forestry program.~~

"Developed or partially developed lot" means a lot or parcel of land upon which a usable structure is located.

"Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, clearing, grading, paving, excavation, drilling operations or storage of equipment or materials located within the area of special flood hazard. Development does not mean trimming, pruning, cutting or removal of trees unless ancillary to development.

"Development activity" means any work, condition, or activity which requires a permit or approval under Titles 11, 12, 14, 16 (except 16.25 Trees), 17 or 18 DMMC.

"Environmentally Critical Areas". See "Critical areas."

"Land clearing" means the act of removing trees, ~~topping or destroying trees~~, topsoil, or ground cover from any undeveloped or partially developed lot, environmentally critical areas, shoreline environments, public lands, or public right-of-way to prepare for development or for timber.

"Significant trees" means healthy evergreen trees twenty-four ~~six~~ inches (6" 24") in diameter or greater as measured at fifty-four inches (54") above the ground, and healthy deciduous trees (excluding maples, alders, European ashes, cottonwoods and willows) eighteen ~~eight~~ inches (8" 18") in diameter or greater as measured at fifty-four inches (54") above the ground.

"Small trees" means evergreen trees that are less than six inches (6") in diameter as measured at fifty-four inches (54") above the ground and deciduous trees that are less than eight inches (8") in diameter as measured at fifty-four inches (54") above the ground.

"Tree" means a living woody plant characterized by one main stem or trunk and many branches, and having a diameter of four inches or more measured at 24 inches (24") above ground level.

"Tree trimming or pruning" means to cut branches and/or trunk from a tree using practices approved by the International Society of Arboriculture to maintain a tree in a healthy and safe condition.

"Tree removal" means the removal of the entire tree including the roots, trunk, branches and canopy.

~~"Tree topping" means the indiscriminate cutting of tree branches to stubs or lateral branches that are not large enough to assume the terminal role. Other names for topping include but are not limited to heading, "tipping," "hatracking," and "rounding over."~~

"Undeveloped lot" means a lot or parcel of land upon which no usable structure exists.

"Vegetation" means the general plant life and the ground cover provided by plants, including trees.

**Sec. 14.** DMMC 14. 20.030 and section 55 of Ordinance No. 1581 are amended to read as follows:



Purpose.

(1) These regulations are adopted for the following purposes:

(a) To promote the public health, safety, and general welfare of the citizens;

(b) To preserve and enhance the physical and aesthetic character by preventing indiscriminate removal or destruction of trees, soils, or ground cover within designated environmentally critical areas and shoreline areas;

(c) To promote land development practices that result in a minimal disturbance to the City's vegetation and soils;

(d) To minimize surface and subsurface water runoff volumes and to prevent erosion-sedimentation and reduce the risk of slides and other unstable conditions;

(e) To minimize the need for additional storm drainage facilities;

(f) To promote the retention of clusters of trees for the abatement of noise and wind protection as well as site stability maintenance;

~~(g) To acknowledge that trees and ground cover reduce air pollution by producing pure oxygen from carbon dioxide;~~

(h) To promote building and site planning practices that are consistent with the City's natural topographical and vegetational features while at the same time recognizing that certain factors such as condition (e.g., disease, danger of falling, etc.), proximity to existing and proposed structures and improvements, interference with utility services, and the realization of a

reasonable enjoyment of property may require the removal of certain trees and ground cover;

(i) To ensure prompt development, restoration and replanting, and effective erosion and sedimentation control of property during and after land clearing, grading, or filling through the use of phase development, performance bonds, and other reasonable controls;

(j) To reduce degradation of streams and other water bodies located in and adjacent to the City via scouring, siltation, and water pollution;

(k) To implement the goals and objectives of the State Environmental Policy Act and the water quality standards set forth by the State Department of Ecology; and

(l) To implement and further the City's Comprehensive Plan.

(2) It is not the intent or purpose of this chapter to prevent the reasonable development of land in the City.

**Sec. 15.** DMMC 14.20. 180 and section 70 of Ordinance No. 1581 are, amended to read as follows:

**Exemptions.** Applicants must receive a written letter of exemption from the City Manager or the City Manager's designee before commencing with the exempted work. Exemption from the permit requirements of this chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws ordinances of this jurisdiction.

(1) A grading or land clearing permit shall not be required for any of the following activities provided that the land clearing activity shall not

exceed 2,000 square feet; the grading and filling activity shall not exceed 50 cubic yards; and that the clearing, grading, and filling activity shall be subject to the minimum requirements specified in this chapter:

(a) The installation and maintenance of fire hydrants, water meters, stations, and street furniture by the City or its Contractors;

(b) Removal of trees and ground cover in emergency situations involving immediate danger to life or property or substantial fire hazards;

(c) Removal of trees or ground cover or dumping of fill on partially developed lots for the purpose of general property and utility maintenance, view maintenance or creation, landscaping, or gardening; provided, that this exemption shall not apply to land clearing, grading, or filling for the purpose of developing the property with substantial permanent improvements such as roads, driveways, utilities, or buildings;

(d) Removal of dead Or diseased ground cover or trees;

(e) A grading and filling activity does not obstruct a drainage course;

(f) Grading and filling activity to place a building foundation approved under a City building permit and involves less than 120 cubic yards of grading and filling;

(g) Cemetery graves;



(h) Refuse disposal sites controlled by other regulations;

(i) Exploratory excavations performed under the direction of a registered design professional. Exploratory excavation is not to begin construction of a building prior to receiving a permit (the sole purpose for preparing a soils report).

(2) Exemption from the permit requirements of this chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of the City.

**Sec. 16.** DMMC 18. 195.020 (4) and section (4) of section Ordinance No. 1591 are amended as follows:

(4) Plan requirements. The Planning, Building and Public Works Department shall review and may approve, approve with modifications, or disapprove site landscape development plans for all development activities subject to the provisions of this chapter. A landscaping plan shall be submitted to the Planning, Building and Public Works Department accurately drawn using an appropriate engineering or architectural scale which shows the following:

(a) Boundaries and dimensions of the site;

(b) Location and identification of all streets, alleys, sidewalks, and easements abutting the site, including dimensions;

(c) Proposed topography at a maximum of five-foot contours

(d) Proposed location and dimensions of all on-site buildings including height of structures and distance between buildings;

(e) Details of any proposed architectural barriers;

(f) Dimensions and location of storage and trash areas, loading docks, exterior utility installations, and mechanical equipment;

(g) Layout and dimensions of all parking stalls, easements, access ways, turnaround areas, driveways, and sidewalks on-site;

(h) Percentage of landscaping for total site and net square footage of parcel;

(i) Proposed landscaping including location, species, and size at time of planting;

(j) Existing vegetation in general, and identifying all evergreen trees ~~six~~ twenty-four inches in diameter or greater as measured at fifty-four inches (54) above the ground and all deciduous trees ~~eight~~ eighteen inches in diameter or greater as measured at fifty-four inches (54) above the ground;

(k) Irrigation plan, indicating the location of pipes, sprinkler heads and pumps, pipe size, head capacity, water pressure in pounds per square inch at the pump and sprinkler heads, and timer system.

Sec. 17. DMMC 18. 195. 110 (1) and section (1) of section 422 of Ordinance No. 1591 are amended as follows:

(1) All existing healthy evergreen trees ~~six~~ twenty-four inches DBH (diameter at breast height) or greater and all existing healthy deciduous trees (excluding maples, alders, European ashes, cottonwoods and willows) ~~eight~~ eighteen inches in diameter or greater as

measured at fifty-four inches (54) above the ground, shall be retained to the extent feasible within landscape areas. The Planning, Building and Public Works Department shall designate trees to be retained prior to issuance of a land clearing, grading, and filling permit.

DMMC 18. 195. 130 and section 424 of Ordinance No. 1591 are repealed.

**Sec. 20. Severability - Construction.**

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional Or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

(2) If the provisions of this Ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this Ordinance is deemed to control.

//  
//  
//  
//  
//

**Sec. 21. Effective date.** This Ordinance shall take effect and be in full force thirty (30) days after its passage and approval in accordance with law.



# **EXHIBIT 2**

## Chapter 1.16 INITIATIVE AND REFERENDUM POWERS<sup>1</sup>

### Sections

#### ARTICLE I. GENERAL

- 1.16.010 Statement of intent.
- 1.16.020 Effective date of ordinances.
- 1.16.030 Ordinances not subject to referendum.
- 1.16.040 Corrupt practices – Penalties.

#### ARTICLE II. INITIATIVE AND REFERENDUM PROCESS

- 1.16.050 Filing proposed measures with the city clerk.
- 1.16.060 Review of proposed measures – Procedure by the city clerk and city attorney.
- 1.16.070 Assignment of serial number.
- 1.16.080 Ballot title and summary – Formulation by city attorney.
- 1.16.090 Ballot title and summary – Notice.
- 1.16.100 Ballot title and summary – Appeal to superior court.
- 1.16.110 Ballot title and summary – Mailed to proponents and other persons – Appearance on petitions.
- 1.16.120 Petitions – Paper – Size – Contents.
- 1.16.130 Initiative petitions – Form.
- 1.16.140 Referendum petitions – Form.
- 1.16.150 Petitions – Signatures – Number necessary.
- 1.16.160 Time for filing petitions.
- 1.16.170 Petitions – Terminal date – Signature withdrawal.
- 1.16.180 Petitions – Checking by city clerk.
- 1.16.190 Petitions – Acceptance or rejection by the city clerk.
- 1.16.200 Petition – Review of refusal to accept and file.
- 1.16.210 Petition – Destruction on final refusal.
- 1.16.220 Initiative petition – Council action.
- 1.16.230 Referendum petition – Council action – Filing suspends ordinance.
- 1.16.240 Petition – Appeal to superior court if city council fails to act.
- 1.16.250 Substitute for rejected initiative.
- 1.16.260 Substitute for rejected initiative – Ballot title.
- 1.16.270 Conduct of election.
- 1.16.280 Notice of election.
- 1.16.290 Form of ballot.
- 1.16.300 Form of ballot for alternative measures.
- 1.16.310 Initiative – Effective date – Record.
- 1.16.320 Referendum – Effective date – Record.
- 1.16.330 Initiative – Repeal or amendment – Method.
- 1.16.340 Initiative – Repeal or amendment – Record.

1.16.350 User's guide.

### ARTICLE III. RESTRICTION OR ABANDONMENT OF INITIATIVE AND REFERENDUM

1.16.360 Restriction on or abandonment of powers.

1.16.370 Ordinance restricting or abandoning powers – After election.

### ARTICLE I. GENERAL

#### **1.16.010 Statement of intent.**

The city council adopts the powers of initiative and referendum for the registered voters of the city.  
[Ord. 864 § 1, 1990.]

#### **1.16.020 Effective date of ordinances.**

Ordinances of the city shall not go into effect before 30 days from the time of final passage by the city council and are subject to referendum during that period. This section shall not apply to ordinances exempted in DMMC 1.16.030. [Ord. 864 § 2, 1990.]

#### **1.16.030 Ordinances not subject to referendum.**

Ordinances of the city that shall not be subject to referendum and that shall become effective five days following their passage and legal publication are as follows:

- (1) Ordinances initiated by petition;
- (2) Ordinances necessary for immediate preservation of public peace, health, and safety or for the support of city government and its existing public institutions that contain a statement of urgency and are passed by unanimous vote of those on the council who are present;
- (3) Ordinances providing for local improvement districts;
- (4) Ordinances appropriating money;
- (5) Ordinances providing for or approving collective bargaining;
- (6) Ordinances providing for the compensation of or working conditions of city employees;
- (7) Ordinances authorizing or repealing the levy of taxes;
- (8) Ordinances changing the zoning classification of real property; and
- (9) Any ordinances exempted now or hereafter by state law from the referendum process. [Ord. 864 § 3, 1990.]

#### **1.16.040 Corrupt practices – Penalties.**

- (1) No person shall:
  - (a) Sign or decline to sign an initiative or referendum petition for consideration or gratuity or promise thereof;

(b) Give or offer a consideration or gratuity to a person to induce the person to sign or not to sign or to vote for or against an initiative or referendum measure;

(c) Interfere with or attempt to interfere with the right of a registered voter to sign or not to sign an initiative or referendum petition or with the right to vote for or against an initiative or referendum measure by threats or intimidation or other corrupt means or practice; or

(d) Pay or receive compensation for soliciting signatures on an initiative or referendum petition if any of that compensation is based on the number of signatures collected in the course of or as a result of that solicitation.

(2) A violation of or failure to comply with this section is a class 1 civil infraction. [Ord. 1009 § 28, 1993; Ord. 864 § 4, 1990.]

## **ARTICLE II. INITIATIVE AND REFERENDUM PROCESS**

### **1.16.050 Filing proposed measures with the city clerk.**

If a registered voter of the city, either individually or on behalf of an organization, desires to petition to the city council to enact a proposed measure, or order that a referendum of any nonexempt ordinance passed by the city council be submitted to the people, that individual shall file with the city clerk a typewritten copy of the measure proposed, accompanied by: the name, mailing address, and telephone number of the proposer; an affidavit that the proposer is a registered voter of the city; and a filing fee of \$25.00. [Ord. 864 § 5, 1990.]

### **1.16.060 Review of proposed measures – Procedure by the city clerk and city attorney.**

Upon receipt of a proposed measure, and prior to giving a serial number thereto, the city clerk shall submit a copy thereof to the city attorney and give notice to the petitioner of such transmittal. Upon receipt of the measure, the city attorney may confer with the petitioner and shall within 10 working days from receipt thereof review the proposal for matters of form and style, and such matters of substantive import as may be agreeable to the petitioner, and shall recommend to the petitioner such revision or alteration of the measure as may be deemed necessary and appropriate. The recommendations of the city attorney shall be advisory only, and the petitioner may accept or reject them in whole or in part. The city attorney shall issue a certificate of review certifying that he/she has reviewed the measure for form and style and that the recommendations thereon, if any, have been communicated to the petitioner, and such certificate shall note whether or not the petitioner accepts the recommendations of the city attorney. [Ord. 864 § 6, 1990.]

### **1.16.070 Assignment of serial number.**

Within five working days after issuance of a certificate of review by the city attorney, the petitioner, if he/she desires to proceed with sponsorship of the measure, shall file the measure together with the certificate of review with the city clerk for assignment of a serial number. The city clerk shall refuse to assign a serial number to the measure unless it is accompanied by a certificate of review. The city clerk shall give a unique serial number to each measure. The city clerk shall use a separate numbering series for initiatives and referendums. The city clerk shall forthwith transmit a copy of the



measure proposed, bearing such number, to each city councilmember, the city manager, and the city attorney. Thereafter a measure shall be known and be designated on all petitions, ballots, and proceedings as "Initiative Measure No. \_\_\_\_" or "Referendum Measure No. \_\_\_\_." [Ord. 864 § 7, 1990.]

#### **1.16.080 Ballot title and summary – Formulation by city attorney.**

(1) Within five working days after receipt of a measure bearing a serial number assigned by the city clerk, the city attorney shall formulate and transmit to the city clerk, a concise statement posed as a question ("ballot title") and not to exceed 25 words, bearing the serial number of the measure and a summary of the measure, not to exceed 75 words, to follow the statement. The statement may be distinct from the legislative title of the measure and shall give a true and impartial statement of the purpose of the measure. Neither the statement nor the summary may intentionally be an argument, nor likely to create prejudice, either for or against the measure. The ballot title formulated by the city attorney shall be the ballot title of the measure unless changed by appeal.

(2) When practicable, the ballot title shall be phrased in language so that a "for" vote on the measure will clearly be a vote in favor of changing the then current law, and an "against" vote on the measure will clearly be a vote that would result in no change to the current law. [Ord. 864 § 8, 1990.]

#### **1.16.090 Ballot title and summary – Notice.**

Upon the filing of the ballot title and summary for an initiative or referendum petition in his/her office, the city clerk shall notify forthwith by telephone or by mail the person proposing the measure and any other individuals who have made written request for such notification of the exact language of the ballot title. [Ord. 864 § 9, 1990.]

#### **1.16.100 Ballot title and summary – Appeal to superior court.**

(1) If any registered voter of the city is dissatisfied with the ballot title or summary formulated by the city attorney, he or she may, within 10 days from the filing of the ballot title and summary with the city clerk, appeal to superior court by petition setting forth the measure, the title, and summary formulated by the city attorney, and his or her objections to the ballot title or summary, and requesting amendment of the title or summary by the court.

(2) A copy of the petition on appeal together with a notice that an appeal has been taken shall be served upon the city clerk, the city attorney, and upon the person proposing the measure if the appeal is initiated by someone other than that person. [Ord. 864 § 10, 1990.]

#### **1.16.110 Ballot title and summary – Mailed to proponents and other persons – Appearance on petitions.**

When the ballot title and summary are finally established, the city clerk shall file the instrument establishing it with the proposed measure and transmit a copy thereof by mail to the person proposing the measure and to any other individuals who have made written request for such notification. Thereafter such ballot title shall be the title of the measure in all petitions, ballots, and other proceedings in relation thereto. The summary shall appear on all petitions directly following the ballot title. [Ord. 864 § 11, 1990.]

**1.16.120 Petitions – Paper – Size – Contents.**

The person proposing the measure shall print blank petitions upon single sheets of paper of good writing quality not less than 8 1/2 inches in width and not less than 11 inches in length. Every signer to a petition shall add to his/her signature the place of residence giving street and number. The signatures need not all be appended to one paper, but one of the signers on each paper must attach thereto an affidavit stating the number of signatures thereon, that each signature thereon is a genuine signature of the person whose name it purports to be, and that the statements thereon made are true as he believes. Petitions shall be in the form required by DMMC 1.16.130 or 1.16.140, and shall have a full, true, and correct copy of the proposed measure referred to therein attached to the petition.

[Ord. 864 § 12, 1990.]

**1.16.130 Initiative petitions – Form.**

Petitions for proposing measures for submission to the city council shall be substantially in the following form:

(Here insert the established ballot title of the measure.)

(Here insert the established summary of the measure.)

**WARNING**

Every person who signs this petition with any other than his/her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he/she is not a registered voter, or signs a petition when he/she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a criminal offense.

Each signature shall be executed in ink or indelible pencil and shall be followed by the printed name of the signer, the date of the signing, and the address of the signer.

**INITIATIVE PETITION FOR SUBMISSION TO THE CITY COUNCIL OF DES MOINES,  
WASHINGTON**

To the City Clerk of the City of Des Moines, Washington:

We, the undersigned registered voters of the City of Des Moines, Washington, respectfully direct that this petition and the proposed measure known as Initiative Measure No. \_\_\_\_ and entitled (here insert the established ballot title of the measure), a full, true, and correct copy of which is attached to this petition, be transmitted to the City Council of the City of Des Moines, Washington and we respectfully petition the City Council to enact said proposed measure into law; furthermore, if the City Council fails to enact this measure that it be submitted to a vote of the people at a regular or special election to be held on a date and in the manner required by the Revised Code of Washington; and each of us for himself or herself says: I have personally signed this petition; I am legal voter of the City of Des Moines, Washington, my residence address is correctly stated, and I have knowingly signed this petition only once.

Petitioner's    Petitioner's Residence

Signature   Printed Name   Address   Date

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

etc.

I certify or declare under penalty of perjury under the laws of the State of Washington that the foregoing petition contains \_\_\_\_\_ signatures, that I am one of the signers, that each signature thereon is a genuine signature of the person whose name it purports to be, and that the statements therein made are true as I believe.

\_\_\_\_\_  
Date and Place   Signature

[Ord. 864 § 13, 1990.]

### **1.16.140 Referendum petitions – Form.**

Petitions for ordering that ordinances passed by the city council be referred to the people at the next ensuing general election, or special election ordered by the city council, shall be substantially in the following form:

(Here insert the established ballot title of the measure.)

(Here insert the established summary of the measure.)

#### **WARNING**

Every person who signs this petition with any other than his/her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he/she is not a registered voter, or signs a petition when he/she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a criminal offense.

Each signature shall be executed in ink or indelible pencil and shall be followed by the printed name of the signer, the date of the signing, and the address of the signer.

#### **PETITION FOR REFERENDUM**

To the City Clerk of the City of Des Moines, Washington:

We, the undersigned registered voters of the City of Des Moines, Washington, respectfully order and direct that Referendum Measure No. \_\_\_\_ and entitled (here insert the established ballot title of the measure), being an ordinance passed by the Des Moines City Council, a full, true, and correct copy of which is attached to this petition, shall be referred to a vote of the people pursuant to state law for

their approval or rejection at a regular or special election to be held on a date and in the manner required by the Revised Code of Washington; and each of us of himself or herself says: I have personally signed this petition; I am legal voter of the City of Des Moines, Washington, my residence address is correctly stated, and I have knowingly signed this petition only once.

Petitioner's    Petitioner's Residence

Signature    Printed Name    Address    Date

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

etc.

I certify or declare under penalty of perjury under the laws of the State of Washington that the foregoing petition contains \_\_\_\_ signatures, that I am one of the signers, that each signature thereon is a genuine signature of the person whose name it purports to be, and that the statements therein made are true as I believe.

\_\_\_\_\_  
Date and Place    Signature

[Ord. 864 § 14, 1990.]

#### **1.16.150 Petitions – Signatures – Number necessary.**

When the person proposing any initiative or referendum measure has secured upon such petition the number of signatures of valid registered voters equal to not less than 15 percent of the number of persons listed as registered voters within the city on the day of the last preceding city general election, he/she may submit the petition to the city clerk for filing. [Ord. 864 § 15, 1990.]

#### **1.16.160 Time for filing petitions.**

(1) Initiative petitions containing the required signatures must be filed with the city clerk within 180 days from the date of issuance of the initiative ballot title and summary by the city attorney. If the petitioner fails to file such petition within the prescribed time limit, it shall have no validity and the petition shall not be considered by the city council as an initiative petition.

(2) Referendum petitions containing the required signatures must be filed with the city clerk within 30 days from the passage of a nonexempt ordinance by the council, petitioning the council to reconsider a nonexempt ordinance which is subject to referendum, or to submit the same to a vote of the people. If the petitioner fails to file such petition within the prescribed time limit, it shall have no validity and the petition shall not be considered by the city council as a referendum petition. [Ord. 864 § 16, 1990.]



**1.16.170 Petitions – Terminal date – Signature withdrawal.**

---

(1) The date the city clerk begins to certify a petition shall be referred to as the terminal date. Additional pages of one or more signatures may be added to the petition by filing the same with the city clerk prior to such terminal date. No signatures shall be accepted or withdrawn after such terminal date; provided, if the signatures are found by the city clerk to be insufficient, the petition may be amended in that respect within 10 days from the date of the certificate. Within 10 days after submission of the amended petition the city clerk shall make an examination thereof and append his/her certificate thereto in the manner provided for in DMMC 1.16.180.

(2) Any signer of a filed petition may withdraw his or her signature by a written request for withdrawal filed with the city clerk prior to such terminal date. Such written request shall so sufficiently describe the petition as to make identification of the person and the petition certain. The name of any person seeking to withdraw shall be signed exactly the same as contained on the petition and, after the filing of such request for withdrawal, prior to the terminal date, the signature of any person seeking such withdrawal shall be deemed withdrawn. [Ord. 864 § 17, 1990.]

**1.16.180 Petitions – Checking by city clerk.**

---

(1) Within 10 days from the filing of a petition submitting a proposed ordinance or calling for a referendum, the city clerk shall ascertain and append to the petition a certificate stating whether or not it is signed by a sufficient number of registered voters, using the registration records and returns of the preceding municipal election for sources of information, and the city council shall allow the city clerk extra help for the purpose, if necessary.

(2) The term "signer" shall mean any person who signs his/her own name to a petition.

(3) Petitions containing the required number of signatures shall be accepted as prima facie valid until their invalidity has been proved.

(4) A variation on petitions between the signatures on the petition and that on the voter's permanent registration caused by the substitution of initials instead of the first or middle names, or both, shall not invalidate the signature on the petition if the surname and handwriting are the same.

(5) Signatures, including the original, of any person who has signed a petition two or more times shall be stricken.

(6)(a) On an initiative petition, signatures followed by a date of signing which is more than 180 days prior to the date of filing of the petition shall be stricken.

(b) On a referendum petition, signatures followed by a date of signing which is more than 30 days prior to the date of filing of the petition shall be stricken. [Ord. 864 § 18, 1990.]

**1.16.190 Petitions – Acceptance or rejection by the city clerk.**

---

(1) The city clerk shall refuse to file any initiative petition being submitted upon any of the following grounds:

(a) That the petition is not in the form required by DMMC 1.16.130 or 1.16.140;

- (b) That the petition clearly bears insufficient signatures;
- (c) That the time within which the petition may be filed has expired;
- (d) That the initiative petition proposes an action which is not subject to the initiative process as determined by written legal opinion of the city attorney.

(2) In case of such refusal, the city clerk shall endorse on the petition the expression "submitted and refused," the reason for the refusal, and the date, and shall retain the petition pending appeal.

(3) If none of the grounds for refusal exists, the city clerk shall accept and file the petition. [Ord. 864 § 19, 1990.]

#### **1.16.200 Petition – Review of refusal to accept and file.**

(1) If the city clerk refuses to file a petition when submitted to him/her for filing, the person submitting it for filing may apply to superior court for a citation requiring the city clerk to bring the petition before the court, and for a writ of mandamus to compel him/her to file it. Any such action must be filed in superior court within 10 days following such refusal.

(2) If the court issues the citation, and determines that the petition is legal in form and apparently contains the requisite number of signatures and was submitted for filing within the time prescribed by state law, it shall issue its mandate requiring the city clerk to file it in his/her office as of the date of submission for filing. [Ord. 864 § 20, 1990.]

#### **1.16.210 Petition – Destruction on final refusal.**

If no appeal is taken from the refusal of the city clerk to file a petition within the time prescribed, or if an appeal is taken and the city clerk is not required to file the petition by the mandate of the superior court, the city clerk may destroy it. [Ord. 864 § 21, 1990.]

#### **1.16.220 Initiative petition – Council action.**

If the petition accompanying the proposed ordinance contains the required signatures, and if it contains a request that, unless passed by the city council, the ordinance be submitted to a vote of the people, the city council shall either:

(1) Pass the proposed ordinance without alteration within 20 days after the city clerk's certificate that the number of signatures on the petition are sufficient; or

(2) Within 20 days after the city clerk's certificate of sufficiency is attached to the petition, cause to be called a special election to be held not less than 30 nor more than 60 days thereafter, for submission of the proposed ordinance without alteration, to a vote of the people unless a general election will occur within 90 days, in which event submission must be made at the general election. [Ord. 864 § 22, 1990.]

#### **1.16.230 Referendum petition – Council action – Filing suspends ordinance.**

(1) Upon the filing of a referendum petition, which contains the required number of signatures, and which is filed within 30 days of the passage of such ordinance, petitioning therein that such ordinance be submitted to the electorate, the city council shall either:

(a) Enact an ordinance repealing the subject ordinance in its entirety within 20 days after the city clerk's certificate that the number of signatures on the petition are sufficient; or

(b) Within 20 days after the city clerk's certificate of sufficiency is attached to the petition, cause to be called a special election to be held not less than 30 nor more than 60 days thereafter, for submission of the proposed ordinance without alteration, to a vote of the people unless a general election will occur within 90 days, in which event submission must be made at the general election.

(2) The operation of an ordinance so protested against shall be suspended until: (a) the referendum petition is finally found insufficient or untimely; or (b) the legislative action so referred is approved by the voters at a referendum election. [Ord. 864 § 23, 1990.]

#### **1.16.240 Petition – Appeal to superior court if city council fails to act.**

Following receipt of a valid petition, if the city council refuses either to pass an initiative ordinance, to order an election thereon, or to refer an ordinance to a vote of the people, any taxpayer within the city may commence an action in superior court against the city for the purpose of requiring an election to be held in the city for the purpose of voting upon the proposed ordinance. Any such action must be filed within 60 days of the date the city council should have taken the appropriate action. [Ord. 864 § 24, 1990.]

#### **1.16.250 Substitute for rejected initiative.**

If the city council, having rejected a measure submitted to it by initiative petition, proposes a different measure dealing with the same subject, the city clerk shall give that measure the same number as that borne by the initiative measure followed by the letter "B." Such measure so designated as "Alternative Measure No. \_\_\_\_ B," together with a ballot title, when determined, shall be placed on the ballot along with the initiative measure. [Ord. 864 § 25, 1990.]

#### **1.16.260 Substitute for rejected initiative – Ballot title.**

For a measure designated by him/her as "Alternative Measure No. \_\_\_\_ B," the city clerk shall obtain from the city attorney a ballot title in the manner provided for obtaining ballot titles for initiative measures. The ballot title therefor shall be different from the ballot title of the measure in lieu of which it is proposed, and shall indicate, as clearly as possible, the essential differences in the measure. [Ord. 864 § 26, 1990.]

#### **1.16.270 Conduct of election.**

Publication of notice, the election, the canvass of the returns, and declaration of the results shall be conducted in all respects as are other city elections. Any number of proposed ordinances may be voted on at the same election, but there shall not be more than one special election for that purpose during any one six-month period. [Ord. 864 § 27, 1990.]

**1.16.280 Notice of election.**

The city clerk shall cause any ordinance or proposition required to be submitted to the voters at an election to be published in the official newspaper of the city not less than five nor more than 20 days before the election. This publication shall be in addition to the notice required in chapter 29.27 RCW. [Ord. 864 § 28, 1990.]

**1.16.290 Form of ballot.**

Except in the case of alternative voting on a measure initiated by petition, for which a substitute has been passed by the city council, each measure submitted to the people for approval or rejection shall be so printed on the ballot, under the proper heading, that a voter can, by making one choice, express his/her approval or rejection of such measure. Substantially the following form shall be a compliance with this section:

INITIATIVE (REFERENDUM) MEASURE NO. \_\_\_\_\_

(Here insert the ballot title of the measure.)

FOR THE ORDINANCE.    ☐

AGAINST THE ORDINANCE    ☐

[Ord. 864 § 29, 1990.]

**1.16.300 Form of ballot for alternative measures.**

If an initiative measure proposed to the city council has been rejected by the city council and an alternative measure is passed by the city council in lieu thereof, the serial numbers and ballot titles of both such measures shall be so printed on the official ballots that a voter can express separately by making one selection for each of two preferences: First, as between either measure and neither, and secondly, as between one and the other. Substantially the following form shall be a compliance with this section:

INITIATED BY PETITION AND ALTERNATIVE BY CITY COUNCIL

Initiative Measure No. \_\_\_\_, entitled (here insert the ballot title of the measure.)

Alternative Measure No. \_\_\_\_ B, entitled (here insert the ballot title of the alternative measure.)

VOTE FOR EITHER, OR

AGAINST BOTH

FOR EITHER Initiative No. \_\_\_\_ OR Alternative No. \_\_\_\_ B ☐

AGAINST BOTH Initiative No. \_\_\_\_ AND Alternative No. \_\_\_\_ B ☐

and vote FOR one.

FOR Initiative Measure No. \_ ☐

FOR Initiative Measure No. \_ B ☐

[Ord. 864 § 30, 1990.]

#### **1.16.310 Initiative – Effective date – Record.**

If a majority of the number of votes cast thereon favor the proposed ordinance, it shall become effective immediately upon certification of the election results and shall be made a part of the record of ordinances of the city. The city clerk shall write on the margin of the record thereof "Ordinance by Initiative Measure No. \_\_\_\_." [Ord. 864 § 31, 1990.]

#### **1.16.320 Referendum – Effective date – Record.**

If a majority of the number of votes cast thereon oppose the ordinance subject to the referendum, such ordinance shall be deemed repealed immediately upon certification of the election results. The city clerk shall write upon the margin of the record of the ordinance "Repealed by Referendum Measure No. \_\_\_\_." [Ord. 864 § 32, 1990.]

#### **1.16.330 Initiative – Repeal or amendment – Method.**

(1) An ordinance initiated by petition cannot be repealed or amended except by a vote of the people while the powers of initiative and referendum exist for registered voters of the city.

(2) The city council may by means of an ordinance submit a proposition for the repeal or amendment of an ordinance, initiated by petition, by submitting it to a vote of the people at any general election and if a majority of the votes cast upon the proposition favor it, the ordinance shall be repealed or amended accordingly.

(3) A proposition of repeal or amendment must be published before the election thereon as is an ordinance initiated by petition when submitted to election. [Ord. 864 § 33, 1990.]

#### **1.16.340 Initiative – Repeal or amendment – Record.**

Upon the adoption of a proposition to repeal or amend an ordinance initiated by petition, the city clerk shall write upon the margin of the record of the ordinance "Repealed (or amended) by Initiative Measure No. \_\_\_\_." [Ord. 864 § 34, 1990.]

#### **1.16.350 User's guide.**



There shall be available in the office of the city clerk a written user's guide to assist citizens in exercising their rights under this chapter. This user's guide shall be prepared by the city attorney, and shall contain, without limitation:

- (1) A written legal opinion as to the subjects which are appropriate and inappropriate for the initiative process and the types of ordinances which are subject to the referendum process; and
- (2) Blank petition forms for both initiative and referendum; and
- (3) A step-by-step written guide or flow chart which will enable the citizen to understand and monitor the initiative and referendum processes. [Ord. 864 § 35, 1990.]

### **ARTICLE III. RESTRICTION OR ABANDONMENT OF INITIATIVE AND REFERENDUM**

#### **1.16.360 Restriction on or abandonment of powers.**

- (1) The exercise of such initiative and referendum powers may be restricted or abandoned upon passage of a resolution by the city council or by the filing of a sufficient petition with the city clerk signed by registered voters in number equal to not less than 10 percent of the votes cast at the last general municipal election. The sufficiency of the petition for restriction or abandonment shall be determined by the city clerk and certified as to sufficiency.
- (2) The proposal for the restriction of the initiative and/or referendum powers and/or the proposal for abandonment of such powers shall be voted upon at a special election to be called for that purpose pursuant to DMMC 1.16.220(2) after the passage of the resolution or the certification of sufficiency of the petition. The ballot title and statement of proposition shall be prepared by the city attorney as provided in DMMC 1.16.080. [Ord. 864 § 36, 1990.]

#### **1.16.370 Ordinance restricting or abandoning powers – After election.**

If a majority of votes cast at the election favor restriction or abandonment, such powers of initiative or referendum shall be deemed so restricted or abandoned. [Ord. 864 § 37, 1990.]

---

<sup>1</sup>For statutory provisions relating to the powers of initiative and referendum, see RCW 35A.11.080 – 35A.11.100.

**The Des Moines Municipal Code is current through  
Ordinance 1618-A, passed March 12, 2015.**

Disclaimer: The City Clerk's Office has the official version of the Des Moines Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

# EXHIBIT 3

ORDINANCE NO. 1611  
(as enacted on November 13, 2015)  
**With Elliott Proposed Initiative Language**

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON revising and updating City of Des Moines development regulations relating to the cutting, trimming and removal of trees on private developed sites, private undeveloped sites, public properties, City-owned property and right-of-way, and environmentally critical areas; adding and codifying a new chapter entitled "Trees" to Title 16, amending chapters 14.20, 16.01, and 18.195 of the Des Moines Municipal Code (DMMC) to add new definitions and development regulations, repealing DMMC 18.195.130 and section 424 of Ordinance No. 1591, ~~and finding that the revised development regulations meet the statutory requirements of RCW 36.70A.106.~~

WHEREAS, on November 6, 2014 the City Council of the City of Des Moines adopted Ordinance 14-043 (Trees), later codified as Chapter 16.25 of the DMMC, and

WHEREAS, Ordinance 14-043 and now the DMMC imposes severe constraints on tree cutting and trimming in residential areas including excessive permit and processing costs, and

WHEREAS, Ordinance 14-043 and now the DMMC fails to recognize that in Des Moines tree trimming and cutting is largely routine vegetation maintenance performed to maintain quality of life that is performed periodically, and

WHEREAS, The drafters of Ordinance 14-043 did not produce facts to show a public problem that needs to be eliminated or a public benefit to the ordinance.

WHEREAS, this initiative complies with the Growth Management Act, and

WHEREAS, The people of the City of Des Moines are intelligent, independent and capable of determining when and how to trim their own trees and have exercised prudent tree trimming practices for decades, frequently in coordination with their neighbors, now therefore,

~~WHEREAS, tree cutting, tree removal and tree retention are regulated pursuant to the Use and Maintenance of Public Rights-of-Way (chapter 12.05), Land Filling, Clearing and~~



~~Grading Code (chapter 14.20 DMMC), Environmentally Critical Areas Code (chapter 16.10), Shoreline Master Program (chapter 16.20 DMMC), Layout and Design of Subdivisions and Similar Requirements (chapter 17.35), and Landscaping and Screening Requirements (chapter 18.195 DMMC), and~~

~~WHEREAS, there is no clear policy or development criteria in the DMMC regarding "best management practices" for the cutting of trees, and~~

~~WHEREAS, the City researched and assessed the experience of other jurisdictions in regard to standards and requirements for regulating the cutting of trees, and~~

~~WHEREAS, the City Council Environment Committee held three meetings to consider the matter and provided guidance on the development of Draft Ordinance No. 14-043, and~~

~~WHEREAS, the changes proposed by this Ordinance have been processed in accordance with the requirements of the State Environmental Policy Act (SEPA), a final determination of non-significance was issued by the SEPA responsible official, and published on April 28, 2014, in the Seattle Times, and the appropriate comment period expired on May 12, 2014, and the appeal period concluded on May 22, 2014, and~~

~~WHEREAS, a notice of intent to adopt the proposed code amendments was sent to the Washington State Department of Commerce for a 15-day expedited review and comment period in accordance with State law, and~~

~~WHEREAS, notice of the public hearing was given to the public in accordance with the law, and~~

~~WHEREAS, a public hearing was held on the 22nd day of May, 2014, and the City Council sent the Draft Ordinance back to the Environment Committee for further review, and~~

~~WHEREAS, a City Council Environment Committee met on July 17, 2014 to review and discuss the substitute Draft Ordinance and directed staff to bring the substitute Draft Ordinance back to the full Council, and~~

~~WHEREAS, notice of the public hearing was given to the public in accordance with the law, and~~

~~WHEREAS, a public hearing was held on the 2nd day of October, 2014, and all persons wishing to be heard were heard, and~~

~~WHEREAS, the City Council finds that the amendments contained in this Ordinance are appropriate and necessary for the protection of sensitive, unique, fragile and valuable features of the City's environment and protecting the public health, safety and welfare against loss or damage from the indiscriminant cutting of trees in the City; now therefore,~~

**THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:**

Chapter 16.25 Trees shall be amended as follows:

~~A new chapter shall be added to Title 16 DMMC to read as follows in sections 1 through 12 of this Ordinance:~~

**Sec. 1. Title.** This chapter shall be entitled "Trees".

**Sec. 2. Application.** This chapter shall apply to the removal, cutting, and pruning of trees within the City of Des Moines.

**Sec. 3. Purpose.** These regulations are adopted to promote the public health, safety and general welfare of the citizens of Des Moines, ~~including minimizing erosion, siltation and water pollution, surface water and ground water runoff, risks of landslides, and the need for additional storm drainage facilities; preserving trees for the reduction of noise, wind protection, slope stabilization, animal habitat, and reduction in air pollution; removing dead, diseased, or hazardous trees; implementing the City's comprehensive plan; providing for the delivery of reliable utility service; and reasonable development of property.~~

**Sec. 4. Authority.** ~~This chapter is adopted pursuant to the authority set forth in chapters 36.70A, 36.70B and 36.70C~~



~~RCW and other applicable laws. From and after March 19, 1976, the City shall have all the powers of a nonchartered code city under the council-manager plan of government and shall in all applicable respects be governed by the provisions of Title 35A RCW.~~

**Sec. 5. Permit - Requirements.**

(1) No tree permit, or grading and clearing permit required. Except as otherwise provided in subsection (2) of this section, no tree permit, or grading and clearing permit is required to remove, cut, or prune trees on private developed, partially developed, or undeveloped lots as follows:

(a) Trees located outside of environmentally critical areas, shoreline areas, and associated buffer areas as verified by the City or qualified professional;

(b) Trees that are not part of a required landscaping area; and

(c) The total area to be cleared is less than 2,000 square feet; and.

~~(d) An exemption from a tree permit does not exempt a property owner from complying with policies, criteria and standards contained in this chapter or other applicable local, state or federal regulations or permit requirements.~~

(2) Tree permit required. Except as exempted in subsection (3) of this section, a tree permit is required to remove, cut, or prune trees as follows:

(a) Trees that are larger than small trees located within a critical area or shoreline area, or associated buffers.

(b) Trees located within a required landscaping area, unless replaced at a ratio of 2:1.

(c) Trees located on a private developed, partially developed, or undeveloped lot where the total area to be cleared is 2,000 square feet or greater.

(d) Trees located on City-owned property.

(e) Trees located on City right-of-way.

(3) Exemptions. The following situations are exempt from obtaining a tree permit that would otherwise be required under this section:

(a) Dead, diseased or hazard trees, ~~as determined and/or verified by the City or as determined by a certified arborist, that are located outside of critical areas, shoreline areas and associated buffers.~~

(b) Emergency. A tree may be removed without first obtaining a tree permit in an emergency situation involving immediate danger to life or property provided the City is notified within seven days of the tree being cut, is provided such additional information as the City requests in order to verify the emergency, and an-after-the-fact tree permit is obtained within twenty days following the cutting of the tree, if a permit would be have otherwise been required.

~~(c) Exemption from the permit requirements of this chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this Code or any other laws or ordinances of the City.~~

~~(3) Other permits required. Other permits may be required as follows:~~

~~(a) Removing, cutting, or pruning of trees located within environmentally critical areas or the associated buffer shall be reviewed in accordance with the environmentally critical areas regulations codified in chapter 16.10 DMMC.~~

~~(b) Removing, cutting, or pruning of trees located within shoreline environments or the associated buffer shall be reviewed in accordance with the shoreline master program codified in chapter 16.20 DMMC.~~



~~(c) Removing, cutting, or pruning of trees in a required landscaping area are subject to the Landscaping and Screening provisions codified in chapter 18.195 DMMC, and/or the requirements identified on the Final Plat.~~

~~(d) Removing, cutting, or pruning of trees located within the City right-of-way shall be reviewed in accordance the Use and Maintenance of Public Rights-of-Way provisions codified in chapter 12.05 DMMC.~~

~~(e) Removal, cutting, or pruning of trees that results in a total area of disturbance greater than 2,000 square feet shall be reviewed in accordance with the land clearing, grading, and filling provisions codified in chapter 14.20 DMMC.~~

**Sec. 6. Tree removal, cutting, and pruning limitations.** In addition to the ~~Best Pruning Practices Tree Permit Requirements~~ provisions codified in section ~~75~~ of this Ordinance, the following limitations shall apply to removing, ~~cutting, and pruning of~~ trees:

(1) Trees on private developed, partially developed, or undeveloped lots. No limitations other than a tree permit ~~is if~~ required where the total area to be cleared is 2,000 square feet or ~~greater~~ smaller.

(2) Trees on City-owned property.

~~(a) Removal of dead, diseased or hazard trees as determined and/or verified by the City or as determined by a certified arborist;~~

~~(b) Removal of small trees;~~

~~(c) Tree pruning that does not remove more than 25 percent of a tree's total leaf area;~~

~~(a) There shall be no R~~removal of significant trees, ~~provided unless that~~ the removal of significant trees is ~~subject to combined with~~ tree replacement ratio of 3:1.

~~(3) Trees on City right-of-way. Tree pruning does not remove more than 25 percent of a tree's total leaf area.~~

~~Sec. 7. Best pruning practices. Tree pruning shall conform to the International Society of Arboriculture standards, or other standards approved by the Department of Natural Resources (DNR) and/or the Department of Ecology (DOE), to maintain trees within environmentally critical areas and shoreline areas in a healthy and safe condition.~~

**Sec. 8. Tree replacement.**

(1) Replacement trees - Number. Any tree identified to be retained that is removed, destroyed or damaged shall be replaced by the applicant on the subject property at a ratio of 32:1:

(a) Replacement trees shall be a minimum size of eight feet in height for evergreen trees, and two inches in caliper for deciduous, ~~and shall be approved by the Planning, Building and Public Works Department.~~ The Planning, Building and Public Works Department may approve smaller trees if it determines they are of specimen quality.

(b) Trees shall be provided in addition to any street trees required under chapter 12.15 DMMC. ~~The exact type and location of street trees shall be determined by the Planning, Building and Public Works Department.~~

(2) Maintenance of replacement trees. The applicant shall maintain all replacement trees in a healthy condition. The applicant shall be obligated to replant any replacement tree that dies or becomes diseased.

**Sec. 9. Tree removal permit - Application.** An application for a tree permit shall be submitted on a form provided by the City and shall include the following information:

(1) General information.

(a) The applicant shall give the name, address and telephone number of the applicant and owner of the property and the street address;



(b) The applicant must provide information on the proposed location, species, diameter and number of trees proposed to be ~~cut or pruned~~ removed; and

~~(c) The applicant must agree to pay all costs of cutting, pruning, removing debris, cleaning, and any traffic control needed.~~

~~(d)~~ If the applicant is not the owner of the property, ~~a notarized~~ an authorization by the property owner consenting to the tree ~~cutting~~ removing activity shall be provided.

~~(2) Plan sheet specifications. All plan sheets will contain the following information:~~

~~(a) The date, basis, and datum of the contours, which shall be referenced to the City's network of benchmarks, if applicable;~~

~~(b) Date, north arrow, and adequate scale (1:10, 1:20, or 1:40) on all maps and plans;~~

~~(c) Contours will be at two-foot contour intervals;~~

~~(d) Contact information for the applicant and the property owner, and legal description of the property;~~

~~(32)~~ Temporary Erosion and Sedimentation Control Plan.

(a) Sequence for tree removal ~~and other land-disturbing activities;~~

(b) Schedule for installation and removal of all temporary erosion and sediment control measures, including vegetative measures; and

(c) An outline of the methods to be used in removing and disposing of trees ~~clearing vegetation and disposing of the cleared vegetative matter.~~

~~(4) The applicant shall have an executed hold harmless and release agreement on a form approved by the City, indemnifying and releasing the City, its officials, officers, and agents from liability.~~

~~(5) Other information as deemed necessary by the code official.~~

(3) The Department of Planning Building and Public Works Department shall issue or deny, with reasons stated, a tree permit within 60 days of application, or a permit shall be deemed issued.

**Sec. 10. Permit - Expiration - Extension.**

(1) Except when specific time limits are set by the City Manager or the City Manager's designee, any permit granted under this chapter shall expire one year from the date of issuance.

~~(2) The City Manager or the City Manager's designee may set specific limits to the project commencement and/or completion for any reasonable purpose, including but not limited to environmental reasons or for coordination with other permitted site work.~~

(32) Upon a showing of good cause, a permit may be extended for six months.

(3) Approved plans shall not be amended without authorization of the City Manager or the City Manager's designee.

**Sec. 11. Tree permit to be posted.** No work shall commence until a permit notice has been posted on the subject site at a conspicuous location. The notice shall remain posted until the project has been completed.

**Sec. 12. Fees.** There shall be a fee assessed to compensate the City for the expense of reviewing and processing plans, conducting inspections, ~~providing for outside consulting services,~~ and the like. The fee shall be set by written administrative directive and shall be related to the amount of



anticipated service for the particular application. Fees for permits authorized under this chapter that are reviewed after the proposed site work has started will be assessed at twice the normal rate, except for emergency exemption established in section 5 of this Ordinance.

**Sec. 13.** DMMC 16.01.050 and section (5) of Ordinance No. 1583 are amended to add the following definitions:

~~"Certified arborist" means an individual who has achieved a level of knowledge in the art and science of tree care through experience and by passing a comprehensive examination administered by the International Society of Arboriculture or urban forestry program.~~

"Developed or partially developed lot" means a lot or parcel of land upon which a usable structure is located.

"Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, clearing, grading, paving, excavation, drilling operations or storage of equipment or materials located within the area of special flood hazard. Development does not mean trimming, pruning, cutting or removal of trees unless ancillary to development.

"Development activity" means any work, condition, or activity which requires a permit or approval under Titles 11, 12, 14, 16 (except 16.25 Trees), 17 or 18 DMMC.

"Environmentally Critical Areas". See "Critical areas."

"Land clearing" means the act of removing trees, ~~topping or destroying trees~~, topsoil, or ground cover from any undeveloped or partially developed lot, environmentally critical areas, shoreline environments, public lands, or public

right-of-way to prepare for development or for timber.

"Significant trees" means healthy evergreen trees ~~six inches (6")~~ twenty-four inches (24") in diameter or greater as measured at fifty-four inches (54") above the ground, and healthy deciduous trees (excluding maples, alders, European ashes, cottonwoods and willows) ~~eight inches (8")~~ eighteen inches (18") in diameter or greater as measured at fifty-four inches (54") above the ground.

"Small trees" means evergreen trees that are less than six inches (6") in diameter as measured at fifty-four inches (54") above the ground and deciduous trees that are less than eight inches (8") in diameter as measured at fifty-four inches (54") above the ground.

"Tree" means a living woody plant characterized by one main stem or trunk and many branches, and having a diameter of four inches or more measured at 24 inches (24") above ground level.

~~"Tree pruning trimming or pruning" means to cut branches and/or trunk from a tree using practices approved by the International Society of Arboriculture to maintain a tree in a healthy and safe condition.~~

"Tree removal" means the removal of the entire tree including the roots, trunk, branches and canopy.

~~"Tree topping" means the indiscriminate cutting of tree branches to stubs or lateral branches that are not large enough to assume the terminal role. Other names for topping include but are not limited to "heading," "tipping," "hat-racking," and "rounding over."~~



"Undeveloped lot" means a lot or parcel of land upon which no usable structure exists.

"Vegetation" means the general plant life and the groundcover provided by plants, including trees.

**Sec. 14.** DMMC 14.20.030 and section 55 of Ordinance No. 1581 are amended to read as follows:

Purpose.

(1) These regulations are adopted for the following purposes:

(a) To promote the public health, safety, and general welfare of the citizens;

(b) To preserve and enhance the ~~City's~~ physical and aesthetic character by preventing indiscriminate removal or destruction of trees, ~~soils, or ground cover~~ within designated environmentally critical areas and shoreline areas;

(c) To promote land development practices that result in a minimal disturbance to the City's vegetation and soils;

(d) To minimize surface and subsurface water runoff volumes and to prevent erosion-sedimentation and reduce the risk of slides and other unstable conditions;

(e) To minimize the need for additional storm drainage facilities;

(f) To promote the retention of clusters of trees for the abatement of noise and wind protection as well as site stability maintenance;

~~(g) To acknowledge that trees and ground cover reduce air pollution by producing pure oxygen from carbon dioxide;~~

(hg) To promote building and site planning practices that are consistent with the City's natural topographical and vegetational features while at the same time recognizing that certain factors such as condition (e.g., disease, danger of falling, etc.), proximity to existing and proposed structures and improvements, interference with utility services, and the realization of a reasonable enjoyment of property may require the removal of certain trees and ground cover;

(ih) To ensure prompt development, restoration and replanting, and effective erosion and sedimentation control of property during and after land clearing, grading, or filling through the use of phase development, performance bonds, and other reasonable controls;

(ji) To reduce degradation of streams and other water bodies located in and adjacent to the City via scouring, siltation, and water pollution;

(kj) To implement the goals and objectives of the State Environmental Policy Act and the water quality standards set forth by the State Department of Ecology; and

(lk) To implement and further the City's Comprehensive Plan.

(2) It is not the intent or purpose of this chapter to prevent the reasonable development of land in the City.

**Sec. 15.** DMMC 14.20.180 and section 70 of Ordinance No. 1581 are amended to read as follows:

**Exemptions.** Applicants must receive a written letter of exemption from the City Manager or the City Manager's designee before commencing with the exempted work. Exemption from the permit requirements of this chapter shall not be deemed to grant authorization for any work to be done in any

manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction.

(1) A grading or land clearing permit shall not be required for any of the following activities provided that the land clearing activity shall not exceed 2,000 square feet; the grading and filling activity shall not exceed 50 cubic yards; and that the clearing, grading, and filling activity shall be subject to the minimum requirements specified in this chapter:

(a) The installation and maintenance of fire hydrants, water meters, ~~and pumping~~ stations, and street furniture by the City or its contractors;

(b) Removal of trees and ground cover in emergency situations involving immediate danger to life or property or substantial fire hazards;

(c) Removal of trees or ground cover or dumping of fill on partially developed lots for the purpose of general property and utility maintenance, view maintenance or creation, landscaping, or gardening; provided, that this exemption shall not apply to land clearing, grading, or filling for the purpose of developing the property with substantial permanent improvements such as roads, driveways, utilities, or buildings;

(d) Removal of dead or diseased ground cover or trees;

(e) A grading and filling activity does not obstruct a drainage course;

(f) Grading and filling activity to place a building foundation approved under a City building permit and involves less than 120 cubic yards of grading and filling;

(g) Cemetery graves;

(h) Refuse disposal sites controlled by other regulations;

(i) Exploratory excavations performed under the direction of a registered design professional. Exploratory excavation is not to begin construction of a building prior to receiving a permit (the sole purpose for preparing a soils report).

(2) Exemption from the permit requirements of this chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of the City.

**Sec. 16.** DMMC 18.195.020(4) and section (4) of section 413 of Ordinance No. 1591 are amended as follows:

(4) Plan requirements. The Planning, Building and Public Works Department shall review and may approve, approve with modifications, or disapprove site landscape development plans for all development activities subject to the provisions of this chapter. A landscaping plan shall be submitted to the Planning, Building and Public Works Department accurately drawn using an appropriate engineering or architectural scale which shows the following:

(a) Boundaries and dimensions of the site;



(b) Location and identification of all streets, alleys, sidewalks, and easements abutting the site, including dimensions;

(c) Proposed topography at a maximum of five-foot contours;

(d) Proposed location and dimensions of all on-site buildings including height of structures and distance between buildings;

(e) Details of any proposed architectural barriers;

(f) Dimensions and location of storage and trash areas, loading docks, exterior utility installations, and mechanical equipment;

(g) Layout and dimensions of all parking stalls, easements, access ways, turnaround areas, driveways, and sidewalks on-site;

(h) Percentage of landscaping for total site and net square footage of parcel;

(i) Proposed landscaping including location, species, and size at time of planting;

(j) Existing vegetation in general, and identifying all evergreen trees ~~six~~-twenty-four inches in diameter or greater as measured at fifty-four inches (54") above the ground and all deciduous trees ~~eight~~-eighteen inches in diameter or greater as measured at fifty-four inches (54") above the ground;

(k) Irrigation plan, indicating the location of pipes, sprinkler heads and pumps, pipe size, head capacity, water pressure in pounds per square inch at the pump and sprinkler heads, and timer system.



**Sec. 17.** DMMC 18.195.110(1) and section (1) of section 422 of Ordinance No. 1591 are amended as follows:

(1) All existing healthy evergreen trees ~~six—twenty-four~~ inches DBH (diameter at breast height) or greater and all existing healthy deciduous trees (excluding maples, alders, European ashes, cottonwoods and willows) ~~eight—eighteen~~ inches in diameter or greater as measured at fifty-four inches (54") above the ground, shall be retained to the extent feasible within landscape areas. The Planning, Building and Public Works Department shall designate trees to be retained prior to issuance of a land clearing, grading, and filling permit.

**Sec. 18.** DMMC 18.195.130 and section 424 of Ordinance No. 1591 are repealed.

~~**Sec. 19. Codification.** Sections 1 through 12 of this Ordinance shall be codified as a new chapter entitled "Trees" in Title 16 DMMC.~~

**Sec. 20. Severability - Construction.**

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

(2) If the provisions of this Ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this Ordinance is deemed to control.

**Sec. 21. Effective date.** This Ordinance shall take effect and be in full force thirty (30) days after its passage and approval in accordance with law.

**PASSED BY** the City Council of the City of Des Moines this 13th day of November, 2014 and signed in authentication thereof this 13th day of November, 2014.

Ordinance No. 1611  
Page 18 of 18

---

M A Y O R

APPROVED AS TO FORM:

---

City Attorney

ATTEST:

---

City Clerk

Published: November 18, 2014

Effective Date: December 13, 2014

# EXHIBIT 4



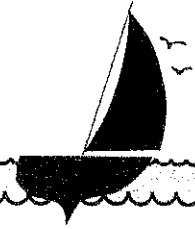


# **EXHIBIT 5**



# City of Des Moines

PLANNING, BUILDING AND PUBLIC WORKS  
www.desmoineswa.gov  
21650 11TH AVENUE SOUTH  
DES MOINES, WASHINGTON 98198-6317  
(206) 870-6522 FAX (206) 870-6596



June 5, 2015

Mr. Tim George  
Assistant City Attorney  
City of Des Moines  
21630 11<sup>th</sup> Avenue S, Suite D  
Des Moines WA 98198

**SUBJECT: City of Des Moines Landslide Activity – General History**

Dear Tim:

Below is a summary of the recent significant landslides that have occurred in the ROW and/or private property. This is not a complete verified list, but it does provide some actual data concerning the critical slope issues facing the City.

In the last 10 years or so, the following significant slides occurred in ROW:

- o Des Moines Memorial Drive near MVD (3 different slides) ~ 2006/2007
- o Des Moines Memorial Drive near 212<sup>th</sup> St ~ 2005/2006
- o Beach Park Slide ~ 2011
- o Beach Park Slide ~ 2013
- o Des Moines Creek Bank ~ 2012
- o South 251<sup>st</sup> Street Slide ~ 2014
- o Des Moines Creek @ South 208<sup>th</sup> St ~ 2014

The above slide damage combined was well over \$3 million in repairs total.

Prior to 2005 there were also some significant landslides in the ROW:

- o Woodmont area ~ 1997
- o Des Moines Memorial Drive ~ 1997
- o Soundview Drive ~ 1999

In the past 10 years or so, the following permits were obtained from the City for private slide repairs:

- o LUA08-002; Des Moines Memorial Drive Slide Repair
- o LUA09-028; Kieras Landslide Repair
- o LUA2011-0034; Robinson Slide Repair
- o LUA2012-0007; Maldiz/Redondo Ridge Rock Wall
- o LUA2014-0033; Kieras Bulkhead/Stair Repair

Others:

- o 2014 Redondo Ridge Condominium Slide
- o 2015 Woodmont Slide

Prior to 2005, a few others were noted:

- Terminus of South 254<sup>th</sup> Place (private)
- 748 S 216<sup>th</sup> Street (private)

The value of the damage or repairs is not necessarily known, however, these repairs combined were certainly in the hundreds of thousands total.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Brandon Carver', with a long horizontal flourish extending to the right.

R. Brandon Carver, P.E., P.T.O.E.  
Engineering Services Manager  
City of Des Moines

cc: Dan Brewer, PBPW Director  
Pat Bosmans, City Attorney



# **EXHIBIT 6**



STATE OF WASHINGTON

DEPARTMENT OF COMMERCE

1011 Plum Street SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000  
[www.commerce.wa.gov](http://www.commerce.wa.gov)

April 23, 2014

Denise Lathrop, AICP  
Community Development Manager  
City of Des Moines  
21630 - 11th Avenue South Suite D  
Des Moines, Washington 98198-639

Dear Ms. Lathrop:

Thank you for sending the Washington State Department of Commerce (Commerce) the following materials as required under RCW 36.70A.106. Please keep this letter as documentation that you have met this procedural requirement.

City of Des Moines.- Proposed ordinance revising and updating development regulations relating to the cutting and removal of trees on private developed sites, private undeveloped sites, public properties, City-owned property and right-of-way, and environmentally critical areas. These materials were received on April 23, 2014 and processed with the material ID # 20210. Expedited Review is requested under RCW 36.70A.106(3)(b).

If this submitted material is an adopted amendment, then please keep this letter as documentation that you have met the procedural requirement under RCW 36.70A.106.

If you have submitted this material as a draft amendment requesting expedited review, then we have forwarded a copy of this notice to other state agencies for expedited review and comment. If one or more state agencies indicate that they will be commenting, then Commerce will deny expedited review and the standard 60-day review period (from date received) will apply. Commerce will notify you by e-mail regarding of approval or denial of your expedited review request. If approved for expedited review, then final adoption may occur no earlier than fifteen calendar days after the original date of receipt by Commerce. Please remember to submit the final adopted amendment to Commerce within ten days of adoption.

If you have any questions, please contact Growth Management Services at [reviewteam@commerce.wa.gov](mailto:reviewteam@commerce.wa.gov), or call Dave Andersen (509) 434-4491 or Paul Johnson (360) 725-3048.

Sincerely,

Review Team  
Growth Management Services

# **EXHIBIT 7**

## A G E N D A   I T E M

### BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Second Reading of Substitute Draft Ordinance No. 14-043-A related to Tree Regulations

FOR AGENDA OF: November 13, 2014

DEPT. OF ORIGIN: Planning, Building and Public Works

**ATTACHMENTS:**

1. Substitute Draft Ordinance No. 14-043-A related to the Tree Regulations
2. October 2, 2014 Council Agenda (without Attachments)
3. Potential Amendments
4. 11/6/14 PowerPoint Presentation to the Environment Committee
5. City Attorney Memos to Councilmembers
6. Relevant City Goals, Policies, and Strategies on Environmental Protection
7. Coppicing Information
8. Range of Potential Fees

DATE SUBMITTED: November 7, 2014

**CLEARANCES:**

- ☒ Legal *PS*  
☐ Finance N/A  
☐ Marina N/A  
☐ Parks, Recreation & Senior Services N/A  
☒ Planning, Building & Public Works DJB  
☐ Police N/A  
☐ Courts N/A  
☐ Economic Development \_\_\_\_\_

APPROVED BY CITY MANAGER  
FOR SUBMITTAL: *[Signature]*

**Purpose and Recommendation**

The purpose of this Agenda Item is for City Council to consider, on second reading, Substitute Draft Ordinance No. 14-043-A (Attachment 1). Substitute Draft Ordinance No. 14-043-A relates to the cutting and removal of trees on private developed sites, private undeveloped sites, City-owned property and right-of-way, and environmentally critical areas. The Ordinance would add a new chapter entitled "Trees" to Title 16; amend Chapters 14.20, 16.01, and 18.195 of the Des Moines Municipal Code (DMMC) to add new definitions and development regulations; and repeal DMMC 18.195.130.

**Suggested Motion**

**Motion 1:** "I move to enact Substitute Draft Ordinance No. 14-043-A relating to the cutting and removal of trees on private developed sites, private undeveloped sites, public properties, City-owned property and right-of-way, and environmentally critical areas; adding and codifying a new chapter entitled "Trees" to Title 16, amending Chapters 14.20, 16.01, and 18.195 of the Des Moines Municipal Code (DMMC) to add new definitions and development regulations; repealing DMMC 18.195.130 and Section 424 of Ordinance No. 1591."

### **Background**

Over the past year, the City Council has been working with the Community Development Division on clarifying regulations related to the cutting and pruning of trees. The October 2, 2014 Council Agenda (Attachment 2) provides additional background information regarding the process for developing and information contained in Substitute Draft Ordinance No. 14-043-A.

### **Discussion**

On October 2, 2014, the City Council conducted a public hearing on Substitute Draft Ordinance No. 14-043-A. Public testimony at the hearing raised some questions related to environmentally critical areas, coppicing, scenic view protection, and permit fees. Council moved the ordinance to a second reading and referred the issues of coppicing and permit fees for the Environment Committee to consider prior to second reading.

On November 6, 2014, the Council Environment Committee met to discuss issues raised at the October 2, 2014 Public Hearing - authority and responsibility to manage and protect environmentally critical areas, scenic view protection, potential amendments, and a summary of potential permit fees. Potential amendments to Substitute Draft ordinance 14-043-A are included as Attachment 3, and are summarized below:

- Amendment 1: Modifications to allow removal of significant trees on un-developed lots, without a tree permit.
- Amendment 2: Modification to include Hold Harmless language.
- Amendment 3: Modification to allow more flexibility in acceptable practices.
- Amendment 4: Modification to DMMC 18.195.130, should Council decide not to repeal.

Attachment 4 is a copy of the PowerPoint presentation made to the Environment Committee, and Attachments 5 through 8 provide more detailed information on the various federal and state statutes and local ordinances that regulate environmentally critical areas; relevant City goals, policies, and strategies and regulations related to environmental protection; information on the practice of coppicing; and the range of potential permit fees associated with trees and vegetation removal.

### **Financial Impact**

Code amendments intended by Substitute Draft Ordinance No. 14-043-A will provide more clarity related to the cutting and pruning of trees on private and public property.

### **Alternatives**

The City Council may:

1. Enact Substitute Draft Ordinance No. 14-043-A as written.
2. Enact Substitute Draft Ordinance No. 14-043-A with amendments.
3. Decline to enact Substitute Draft Ordinance No. 14-043-A.

### **Recommendation or Conclusion**

Staff recommends that City Council enact Substitute Draft Ordinance No. 14-043-A with Amendments 2 and 3.

THIS PAGE LEFT INTENTIONALLY BLANK



## AGENDA ITEM

### BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Public Hearing for Substitute Draft Ordinance No. 14-043-A related to Tree Regulations

ATTACHMENTS:

1. Substitute Draft Ordinance No. 14-043-A related to the Tree Regulations
2. Council Requested Amendment 1
3. Environmentally Critical Area Maps
4. Tree Benefits

FOR AGENDA OF: October 2, 2014

DEPT. OF ORIGIN: Planning, Building and Public Works

DATE SUBMITTED: September 25, 2014

CLEARANCES:

- [X] Legal JD  
[ ] Finance N/A  
[ ] Marina N/A  
[ ] Parks, Recreation & Senior Services N/A  
[X] Planning, Building & Public Works DSB  
[ ] Police N/A  
[ ] Courts N/A  
[ ] Economic Development \_\_\_\_\_

APPROVED BY CITY MANAGER  
FOR SUBMITTAL: AI

#### Purpose and Recommendation

The purpose of this Agenda Item is for City Council to conduct a public hearing to consider substitute Draft Ordinance No. 14-043-A (Attachment 1), relating to the cutting and removal of trees on private developed sites, private undeveloped sites, City-owned property and right-of-way, and environmentally critical areas; adding and codifying a new chapter entitled "Trees" to Title 16, amending Chapters 14.20, 16.01, and 18.95 of the Des Moines Municipal Code (DMMC) to add new definitions and development regulations; repealing DMMC 18.95.130 and Section 424 of Ordinance No. 1591; and finding that the revised development regulations meet the statutory requirements of RCW 36.70A.106.

### Suggested Motions

**Motion 1:** "I move to consider substitute Draft Ordinance 14-043-A"

**Motion 2:** "I move to suspend City Council Rule 26(a) to consider Substitute Draft Ordinance 14-043-A on first reading."

**Motion 3:** "I move to enact Substitute Draft Ordinance No. 14-043-A relating to the cutting and removal of trees on private developed sites, private undeveloped sites, public properties, City-owned property and right-of-way, and environmentally critical areas; adding and codifying a new chapter entitled "Trees" to Title 16, amending Chapters 14.20, 16.01, and 18.95 of the Des Moines Municipal Code (DMMC) to add new definitions and development regulations; repealing DMMC 18.95.130 and Section 424 of Ordinance No. 1591."

**Alternate Motion:** "I move to pass Substitute Draft Ordinance No. 14-043-A to a second reading on or as soon thereafter as the matter may be heard."

### Background

At the November 14, 2013 Environment Committee, Administration provided an overview of how the Community Development Division interprets the DMMC requirements related to requests by citizens and others to prune, top, or remove trees within the City of Des Moines. Below is a summary of the direction the Committee provided as it relates to the following categories of sites:

- **Trees on private developed sites** – No permit required, provided that the tree(s) are not located within a designated critical area, shoreline environment, or required landscaping area.
- **Trees on private undeveloped sites** – Limited to removal of dead, diseased, or hazard trees, subject to approval of a land clearing, grading, and filling permit. Limited tree pruning is allowed using methods approved by the International Society of Arboriculture (ISA) that do not destroy the integrity of the tree. The Committee's position was that indiscriminant removal of trees would increase runoff potential and create an implied view protection.
- **Trees on city-owned property** – Limited to removal of dead, diseased or hazard trees, subject to approval of a land clearing, grading, and filling permit. Limited tree pruning is allowed using methods approved by the International Society of Arboriculture (ISA) that do not destroy the integrity of the tree.
- **Trees on city right-of-way** - Subject to approval of a right-of-way use permit, provided that the tree/s are not located within a designated critical area, shoreline environment, or required landscaping area. Limited tree pruning is allowed using methods approved by the International Society of Arboriculture (ISA) that do not destroy the integrity of the tree.
- **Trees within environmentally critical areas, shoreline environments, and required landscaping (private/public properties)** – Subject to approval of a land clearing, grading, and filling permit and threshold/disturbance limits per Environmentally Critical Areas Ordinance (Chapter 16.10 DMMC, formerly Chapter 18.86), Shoreline Master Program (Chapter 16.20 DMMC, formerly Chapter 18.90), and Landscaping and Screening (Chapter 18.195 DMMC, formerly Chapter 18.41).

*May 22, 2014* – A Public Hearing was held to consider Draft Ordinance No. 14-043. A number of concerns were raised at the Public Hearing, and Council sent the Draft Ordinance back to the Environment Committee for further discussion.

*July 17, 2014 Environment Committee Meeting* – Staff gave a brief review of the Committee's previous direction and provided examples of tree regulations from the Cities of Shoreline, Bellevue, Mercer Island and Kent. To address questions raised at the May 22<sup>nd</sup> public hearing, staff proposed an alternate approach to place the proposed tree regulations into a new Chapter in Title 16 which was supported by the Committee. Accordingly, the draft tree regulations were presented and discussed with the Committee. Staff was directed to finalize the substitute draft Ordinance and bring it forward for Council consideration.

*September 18, 2014 Environment Committee Meeting* – Staff discussed two key policy questions related to increasing the clearing limits and cutting trees on private undeveloped lots. Regarding clearing limits, the City must comply with our National Pollutant Discharge Elimination System (NPDES) permit requirements. Currently, the threshold for erosion and sedimentation control and a clearing and grading permit is 200 square feet while under the NPDES permit, the trigger for erosion and sedimentation control is 2,000 square feet. The Committee recommended raising the clearing limit to the 2,000 square feet. As it relates to cutting trees on private undeveloped lots, the Committee did not reach a consensus on whether a permit should be required to cut trees or not and deferred the discussion to the full Council.

### Discussion

Substitute Draft Ordinance No. 14-043-A proposes to add a new chapter entitled "Trees" to Title 16. The draft ordinance amends Chapter 14.20 DMMC to address concerns about the threshold point at which point a tree permit would be required; amends Chapter 16.01 DMMC to add and modify certain definitions; amends Chapter 18.195.020 to provide consistent definitions; and repeals Chapter 18.195.130 dealing with scenic view protection.

Substitute Draft Ordinance No. 14-043-A reflects the policy direction received from the Environment Committee to address areas of ambiguity, remove areas of contradiction, and provide greater overall clarity on how the City regulates the cutting and maintenance of trees in the City, including but not limited to the following:

#### Permit Requirements:

- (1) No tree permit required. Except as otherwise provided in (2), no tree permit is required to remove, cut, or prune trees on private developed or partially developed lots as follows:
  - (a) Trees located outside of environmentally critical areas, shoreline areas, and associated buffer areas as verified by the City or qualified professional;
  - (b) Trees that are not part of a required landscaping area;
  - (c) The total area to be cleared is less than 2,000 square feet.
- (2) Tree permit required. Except as exempted in (3) below, a tree permit is required to remove, cut, or prune trees as follows:
  - (a) Trees located within a critical area or shoreline area, or associated buffers.
  - (b) Trees located within a required landscaping area.

- (c) Trees located on a private developed or partially developed lot where the total area to be cleared is 2,000 square feet or greater.
  - (d) Trees located on private undeveloped lots.
  - (e) Trees located on city-owned property.
  - (f) Trees located on city right of way.
- (3) Exemptions. The following situations are exempt from obtaining a tree permit that would otherwise be required under this section:
- (a) Dead, diseased or hazard trees, as determined and/or verified by the City or as determined by a certified arborist, that are located outside of critical areas, shoreline areas and associated buffers.
  - (b) Emergency. A tree may be removed without first obtaining a tree permit in an emergency situation involving immediate danger to life or property provided the City is notified within seven days of the tree being cut, is provided such additional information as the City requests in order to verify the emergency, and an after-the-fact tree permit is obtained within twenty days following the cutting of the tree, if required.
  - (c) Exemption from the permit requirements of this chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of the City.
- (4) Other permits required. Other permits may be required as follows:
- (a) Removing, cutting, or pruning of trees located within environmentally critical areas or the associated buffer shall be reviewed in accordance with the environmentally critical areas regulations codified in chapter 16.10 DMMC.
  - (b) Removing, cutting, or pruning of trees located within shoreline environments or the associated buffer shall be reviewed in accordance with the shoreline master program codified in chapter 16.20 DMMC.
  - (c) Removing, cutting, or pruning of trees in a required landscaping area are subject to the Landscaping and Screening provisions codified in chapter 18.195 DMMC, and/or the requirements identified on the Final Plat.
  - (d) Removing, cutting, or pruning of trees located within the City right-of-way shall be reviewed in accordance the Use and Maintenance of Public Rights-of-Way provisions codified in chapter 12.05 DMMC.
  - (e) Removal, cutting, or pruning of trees that results in a total area of disturbance greater than 2,000 square feet shall be reviewed in accordance with the land clearing, grading, and filling provisions codified in Chapter 14.20 DMMC.

The proposed tree regulations are intended to provide a balance between protection of the natural environment within the City consistent with current policy and allowing more flexibility for private property owners.

As previously discussed, the Council Environment Committee did not reach a consensus on whether a permit should be required to cut trees on private undeveloped lots and deferred the discussion to the full Council. A proposed amendment to Substitute Draft Ordinance No. 14-043-A (Council Requested Amendment 1) is provided as Attachment 2.

A series of GIS maps depicting the City's designated critical areas are included as Attachment 3.

A summary of the environmental, social and economic benefits of trees is included as Attachment 4.

Based on the ordinance that is ultimately adopted, staff will prepare a Public Assistance Memo (PAM) to clarify how the City interprets the code as it relates to the cutting and maintenance of trees. The PAM is intended as a user-friendly hand-out that can be obtained at the front counter or on-line to help citizens, property owners, developers and others understand what is allowed, what is exempt and what is required.

#### Financial Impact

Code amendments intended by Substitute Draft Ordinance No. 14-043-A will provide more clarity related to the cutting of trees on private and public property.

#### Alternatives

The City Council may:

1. Enact Substitute Draft Ordinance No. 14-043-A.
2. Enact Substitute Draft Ordinance No. 14-043-A with amendments.
3. Decline to enact Substitute Draft Ordinance No. 14-043-A.

#### Recommendation or Conclusion

Staff recommends that City Council enact Substitute Draft Ordinance No. 14-043-A.



THIS PAGE LEFT INTENTIONALLY BLANK

## REQUESTED AMENDMENT 1

---

### PURPOSE:

The purpose of this amendment is to allow cutting of trees on private undeveloped lots consistent with Section 5 (1) of Substitute Draft Ordinance No. 14-043-A (see Amendment 1A).

### DISCUSSION:

Currently we do not allow removal of significant trees on undeveloped lots without a development application. The code is silent on mitigation of unpermitted tree removal on an undeveloped lot. As it relates to civil improvements of a subdivision, when significant trees are removed, we require a replacement ratio of 5:1. As currently proposed, Substitute Draft Ordinance No. 14-043-A would establish a 3:1 replacement ratio.

The proposed amendment would be a shift in policy direction for the City and may necessitate additional amendments to DMMC 14.20.030 Purpose of Chapter 14.20 Land Filling, Clearing and Grading Code by either amending or deleting DMMC 14.20.030 (1)(b) and (1)(f)-(h). Amendment 1B is intended to address this concern.

### 14.20.030 Purpose.

(1) These regulations are adopted for the following purposes:

- (a) To promote the public health, safety, and general welfare of the citizens;
- (b) To preserve and enhance the City's physical and aesthetic character by preventing indiscriminate removal or destruction of trees, soils, or ground cover on undeveloped and partially developed property;
- (c) To promote land development practices that result in a minimal disturbance to the City's vegetation and soils;
- (d) To minimize surface and subsurface water runoff volumes and to prevent erosion-sedimentation and reduce the risk of slides and other unstable conditions;
- (e) To minimize the need for additional storm drainage facilities;
- (f) To retain clusters of trees for the abatement of noise and wind protection as well as site stability maintenance;
- (g) To acknowledge that trees and ground cover reduce air pollution by producing pure oxygen from carbon dioxide;
- (h) To minimize devaluation of property values due to unnecessary destruction of trees and ground cover;
- (i) To promote building and site planning practices that are consistent with the City's natural topographical and vegetational features while at the same time recognizing that certain factors such as condition (e.g., disease, danger of falling, etc.), proximity to existing and proposed structures and improvements, interference with utility services, and the realization of a reasonable enjoyment of property may require the removal of certain trees and ground cover;
- (j) To ensure prompt development, restoration and replanting, and effective erosion and sedimentation control of property during and after land clearing, grading, or filling through the use of phase development, performance bonds, and other reasonable controls;
- (k) To reduce degradation of streams and other water bodies located in and adjacent to the City via scouring, siltation, and water pollution;
- (l) To implement the goals and objectives of the State Environmental Policy Act and the water quality standards set forth by the State Department of Ecology; and

(m) To implement and further the City's Comprehensive Plan.

(2) It is not the intent or purpose of this chapter to prevent the reasonable development of land in the City. [Ord. 1581 § 55, 2013.]

In addition, Council may want to consider amending the following Comprehensive Plan policies that relate to the preservation of trees (see Amendment 1C):

Conservation Element

*Policy 4-03-08: Promote the preservation of native vegetation and mature trees; revegetation; and appropriate landscaping to improve air and water quality and fish and wildlife habitat.*

*Strategy 4-04-01(5): Regulate and plan land use and condition development proposals in ways that protect mature trees, native vegetation, stream flow, fish and wildlife habitat, groundwater recharge, and air quality, as well as natural topographic, geologic, and hydrologic features.*

**MOTION 1A:**

"I move Amendment 1A"

**Motion 1B:**

"I move Amendment 1B"

**Motion 1C:**

"I move Amendment 1C"

## AMENDMENT 1A:

### NEW SECTION.     Sec. 5. Permit - Requirements

(1) No tree permit required. Except as otherwise provided in subsection (2) of this section, no tree permit is required to remove, cut, or prune trees on private developed, ~~or~~ partially developed, or undeveloped lots as follows:

(a) Trees located outside of environmentally critical areas, shoreline areas, and associated buffer areas as verified by the City or qualified professional;

(b) Trees that are not part of a required landscaping area;

(c) The total area to be cleared is less than 2,000 square feet; and

(d) An exemption from a tree permit does not exempt a property owner from complying with policies, criteria and standards contained in this chapter or other applicable local, state or federal regulations or permit requirements.

(2) Tree permit required. Except as exempted in subsection (3) of this section, a tree permit is required to remove, cut, or prune trees as follows:

(a) Trees located within a critical area or shoreline area, or associated buffers.

(b) Trees located within a required landscaping area.

(c) Trees located on a private developed, ~~or~~ partially developed, or undeveloped lot where the total area to be cleared is 2,000 square feet or greater.

~~(c) Trees located on private undeveloped lots.~~

(de) Trees located on City-owned property.

(ef) Trees located on City right-of-way.

(3) Exemptions. The following situations are exempt from obtaining a tree permit that would otherwise be required under this section:

(a) Dead, diseased or hazard trees, as determined and/or verified by the City or as determined by a certified arborist, that are located outside of critical areas, shoreline areas and associated buffers.

(b) Emergency. A tree may be removed without first obtaining a tree permit in an emergency situation involving immediate danger to life or property provided the City is notified within seven days of the tree being cut, is provided such additional information as the City requests in order to verify the emergency, and an-after-the-fact tree permit is obtained within twenty days following the cutting of the tree, if required.

(c) Exemption from the permit requirements of this chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this Code or any other laws or ordinances of the City.

(4) Other permits required. Other permits may be required as follows:

(a) Removing, cutting, or pruning of trees located within environmentally critical areas or the associated buffer shall be reviewed in accordance with the environmentally critical areas regulations codified in chapter 16.10 DMMC.

(b) Removing, cutting, or pruning of trees located within shoreline environments or the associated buffer shall be reviewed in accordance with the shoreline master program codified in chapter 16.20 DMMC.

(c) Removing, cutting, or pruning of trees in a required landscaping area are subject to the Landscaping and Screening provisions codified in chapter 18.195 DMMC, and/or the requirements identified on the Final Plat.

(d) Removing, cutting, or pruning of trees located within the City right-of-way shall be reviewed in accordance the Use and Maintenance of Public Rights-of-Way provisions codified in chapter 12.05 DMMC.

(e) Removal, cutting, or pruning of trees that results in a total area of disturbance greater than 2,000 square feet shall be reviewed in accordance with the land clearing, grading, and filling provisions codified in chapter 14.20 DMMC.



NEW SECTION. Sec. 6. Tree removal, cutting, and pruning limitations. In addition to the Best Pruning Practices provisions codified in section 7 of this Ordinance, the following limitations shall apply to removing, cutting, and pruning of trees:

(1) Trees on private developed, ~~or partially developed, or undeveloped~~ lots. No limitations other than a tree permit is required where the total area to be cleared is 2,000 square feet or greater.

~~(2) Trees on private undeveloped lots.~~

~~(a) Removal of dead, diseased or hazard trees as determined and/or verified by the City or as determined by a certified arborist;~~

~~(b) Removal of small trees;~~

~~(c) Tree pruning that does not remove more than 25 percent of a tree's total leaf area;~~

~~(d) Removal of significant trees, subject to the Tree Replacement provisions codified in section (8) of this Ordinance, except that removal of significant trees shall be permitted without replacement if done so in conjunction with issuance of a Building Permit.~~

(23) Trees on City-owned property.

(a) Removal of dead, diseased or hazard trees as determined and/or verified by the City or as determined by a certified arborist;

(b) Removal of small trees;

(c) Tree pruning that does not remove more than 25 percent of a tree's total leaf area;

(d) Removal of significant trees, provided that the removal of significant trees is subject to tree replacement ratio of 3:1.

(34) Trees on City right-of-way.

(a) Tree pruning does not remove more than 25 percent of a tree's total leaf area.

## AMENDMENT 1B

(Inserted as Sec. 14 and the following sections renumbered):

Sec. 14. DMMC 14.20.030 and section 55 of Ordinance No. 1581 are amended to read as follows:

14.20.030 Purpose.

(1) These regulations are adopted for the following purposes:

- (a) To promote the public health, safety, and general welfare of the citizens;
- (b) To preserve and enhance the City's physical and aesthetic character by preventing indiscriminate removal or destruction of trees, soils, or ground cover within designated environmentally critical areas and shoreline areas. ~~on undeveloped and partially developed property;~~
- (c) To promote land development practices that result in a minimal disturbance to the City's vegetation and soils;
- (d) To minimize surface and subsurface water runoff volumes and to prevent erosion-sedimentation and reduce the risk of slides and other unstable conditions;
- (e) To minimize the need for additional storm drainage facilities;
- (f) To promote the retention of ~~retain~~ clusters of trees for the abatement of noise and wind protection as well as site stability maintenance;
- (g) To acknowledge that trees and ground cover reduce air pollution by producing pure oxygen from carbon dioxide;
- ~~(h) To minimize devaluation of property values due to unnecessary destruction of trees and ground cover;~~
- (h<sub>1</sub>) To promote building and site planning practices that are consistent with the City's natural topographical and vegetational features while at the same time recognizing that certain factors such as condition (e.g., disease, danger of falling, etc.), proximity to existing and proposed structures and improvements, interference with utility services, and the realization of a reasonable enjoyment of property may require the removal of certain trees and ground cover;

(j) To ensure prompt development, restoration and replanting, and effective erosion and sedimentation control of property during and after land clearing, grading, or filling through the use of phase development, performance bonds, and other reasonable controls;

(k) To reduce degradation of streams and other water bodies located in and adjacent to the City via scouring, siltation, and water pollution;

(l) To implement the goals and objectives of the State Environmental Policy Act and the water quality standards set forth by the State Department of Ecology; and

(m) To implement and further the City's Comprehensive Plan.

(2) It is not the intent or purpose of this chapter to prevent the reasonable development of land in the City. [Ord. 1581 § 55, 2013.]

**AMENDMENT 1C:**

"I move to direct staff to address Council policy related to the protection of mature trees as part of the 2015 Comprehensive Plan update process."

Amendment 2:

PURPOSE:

The purpose of this amendment is to include language in the Draft Ordinance to indemnify the City, its officials, officers, and agents from potential liability resulting in work within a critical area.

NEW SECTION.            Sec. 9. Tree permit - Application. An application for a tree permit shall be submitted on a form provided by the City and shall include the following information:

(1) General information.

(a) The applicant shall give the name, address and telephone number of the applicant and owner of the property and the street address;

(b) The applicant must provide information on the proposed location, species, diameter and number of trees proposed to be cut or pruned; and

(c) The applicant must agree to pay all costs of cutting, pruning, removing debris, cleaning, and any traffic control needed.

(d) If the applicant is not the owner of the property, a notarized authorization by the property owner consenting to the tree cutting activity shall be provided.

(2) Plan sheet specifications. All plan sheets will contain the following information:

(a) The date, basis, and datum of the contours, which shall be referenced to the City's network of benchmarks, if applicable;

(b) Date, north arrow, and adequate scale (1:10, 1:20, or 1:40) on all maps and plans;

(c) Contours will be at two-foot contour intervals;

(d) Contact information for the applicant and the property owner, and legal description of the property;

(3) Temporary Erosion and Sedimentation Control Plan.

(a) Sequence for tree removal and other land-disturbing activities;

(b) Schedule for installation and removal of all temporary erosion and sediment control measures, including vegetative measures;

(c) An outline of the methods to be used in clearing vegetation and disposing of the cleared vegetative matter; and

(4) The applicant shall have an executed hold harmless and release agreement on a form approved by the City, indemnifying and releasing the City, its officials, officers, and agents from liability.

(45) Other information as deemed necessary by the code official.

Motion 2:

"I move Amendment 2"



Amendment 3:PURPOSE:

The purpose of this amendment is to provide flexibility in the standards used for best pruning practices.

NEW SECTION.

Sec. 7. Best pruning practices. Tree pruning shall conform to the International Society of Arboriculture standards, or other standards approved by the Department of Natural Resources (DNR) and/or the Department of Ecology, to maintain ~~a tree~~ trees within environmentally critical areas and shoreline areas in a healthy and safe condition.

Motion 3:

"I move Amendment 3"

Amendment 4:PURPOSE:

This amendment is not recommended by staff. The purpose of this amendment is to provide some clarity to the code section should the City Council decide not to repeal it as proposed by staff.

Sec. 17. DMMC 18.195.130 and section 424 of Ordinance No. 1591 are amended to read as follows:

18.195.130 ~~Scenic view preservation~~Landscape Design.

Landscaping required by this chapter shall~~should~~ be designed, installed, and thereafter maintained in such a manner which ~~preserves~~minimizes impacts to scenic views and vistas of neighborhood and upland properties.~~Under no circumstances shall species of trees be planted which by virtue of their height and/or breadth at maturity impinge upon the views of other properties~~

The City, by this section, does not warrant or guarantee views other than as required for compliance with the Shoreline Management Act and the City's Shoreline Master Program but rather allows for the voluntary agreements between property owners for view preservation generally and for authority through the environmentally critical areas and shoreline permitting processes to allow for tree cutting and pruning to aid in the preservation of views. The City does not warrant or guarantee that trees may be cut or pruned on any parcel/s other than the parcel owned by the applicant upon compliance with the City's environmentally critical areas and shoreline permitting processes if required.

Motion 4:

"I move Amendment 4"

DES MOINES CITY COUNCIL  
ENVIRONMENT COMMITTEE MEETING  
SUBSTITUTE DRAFT ORDINANCE NO. 14-043-A

Denise Lathrop, Community Development Manager  
Dan Brewer, PBPW Director  
Pat Bosmans, City Attorney

November 6, 2014

# Agenda Overview

## Key Issues for Committee Consideration:

- ☐ Critical Areas
  - ☐ Authority to Protect
  - ☐ Coppicing versus Best Management Practices
- ☐ Scenic View Preservation
- ☐ Potential Amendments to Substitute Draft Ordinance
  - ☐ Council Amendment/s
  - ☐ Liability Waiver
  - ☐ Best Pruning Practices
  - ☐ Scenic View Preservation
- ☐ Fees

## Areas of Consensus:

- ☐ Cutting trees on developed sites
- ☐ Increasing clearing limits

# What are critical areas?

**Critical areas include the following areas and ecosystems:**

- ❑ Wetlands;
- ❑ Areas with a critical recharging effect on aquifers used for potable water;
- ❑ Fish and wildlife habitat conservation areas;
- ❑ Frequently flooded areas; and
- ❑ Geologically hazardous areas.

**Critical areas occur throughout the state, in locations that are both known and unknown:**

- ❑ Locally adopted criteria are used to determine the presence or absence of critical areas during land development permit application reviews.
- ❑ Many jurisdictions map known critical areas.

# Obligation to Protect Critical Areas

- Under the Growth Management Act (GMA), a first step in establishing comprehensive plans and development regulations includes designating and protecting critical areas.
- In addition to the GMA, protecting critical areas also has a nexus in several federal and state laws:
  - Federal Clean Water Act
  - Safe Drinking Water Act
  - Endangered Species Act,
  - National Environmental Policy Act
  - National Floodplain Insurance Program (administered by FEMA)
  - Washington State Environmental Policy Act (SEPA)
  - Shoreline Management Act
  - Watershed Planning Act
  - Salmon Recovery Act
  - Municipal Water Law



# City Goals, Policies, Strategies and Regulations Related to Critical Areas & Trees/Vegetation Mgmt.

## ■ City Council:

- ☐ Goal 11: Protect the natural environment.
- ☐ Resolution No. 1199: *Environmental Stewardship Policies for the City of Des Moines*
- ☐ Ordinance No. 1400: Environmentally Critical Area Ordinance
- ☐ Ordinance No. 1502: City of Des Moines Shoreline Master Program

## ■ Comprehensive Plan policies that reference trees/environmental/critical area protection:

- ☐ Land Use Element: Goal 2-01-01, Policy 2-03-03(1)-(4).
- ☐ Transportation Element: Strategy 3-05-08(1).
- ☐ Conservation Element: All goals, policies and strategies.
- ☐ Parks, Recreation and Open Space Element: Finding 6-02-02, Policy 6-03-01, and Strategy 6-04-05.
- ☐ Marina District Element: Strategy 10-04-08.
- ☐ Pacific Ridge Element: Strategy 11-04-08.
- ☐ Appendix B: Buildable Lands Report

# City's Obligation to Protect Critical Areas

## Washington State Growth Management Act (RCW 36.70A)

- ❑ RCW 36.70A.172, critical areas — Designation and protection — Best available science to be used.

(1) In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

(2) If it determines that advice from scientific or other experts is necessary or will be of substantial assistance in reaching its decision, the growth management hearings board may retain scientific or other expert advice to assist in reviewing a petition under RCW 36.70A.290 that involves critical areas. [2010 c 211 § 3; 1995 c 347 § 105.]

## Des Moines Critical Area Ordinance (Chapter 16.10 DMMC)

- ❑ Environmentally Critical Areas — geologically hazardous areas, hillsides, wetlands, areas of special flood hazard, fish and wildlife habitat conservation areas, aquifer recharge areas and streams, and the buffers of these areas.
- ❑ Purpose - protect the public health, safety, and welfare by preventing the adverse environmental impacts of development.
- ❑ "Development Activity" defined as "Any work, condition, or activity which requires a permit or approval under Title 11, 12, 14, 16, 17 or this Title (DMMC18.01.050 Definitions).
- ❑ Best Management Practices shall be used.

# Best Management Practices

## (DMMC 16.10.090)

---

- Best management practices shall be used:
  - For tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications.
  - The City shall observe the use of best management practices to ensure that the activity does not result in degradation to the critical area.
  - Any incidental damage to, or alteration of, a critical area shall be restored, rehabilitated, or replaced at the responsible party's expense.

Mitigate potential impacts to critical areas in the following order (DMMC 16.10.030(11)):

- a) **Avoid** the impact altogether by not taking a certain action or parts of an action;
- b) **Minimize** impact by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impact;
- c) **Rectify** the impact by repairing, rehabilitating, or restoring the affected environmentally critical areas;
- d) **Reduce or eliminate** the impact over time by prevention and maintenance operations during the life of the actions;
- e) **Compensate** for the impact by replacing, enhancing, or providing substitute environmentally critical areas and environments; and
- f) **Monitor** the impact and take appropriate corrective measures.

# How do we compare with our neighbors?

## Burien

- Chapter 19.25 Tree Retention and Landscaping
- Chapter 19.40 Critical Areas
- Tree Cutting/Pruning Application:  
<http://www.burienwa.gov/documentcenter/view/158>
- Tree Owners Manual:  
<http://www.burienwa.gov/documentcenter/view/2799>

## Des Moines

- Chapter 14.20 Land Filling, Clearing & Grading Code
- Chapter 16.05 SEPA
- Chapter 16.10 Environmentally Critical Areas
- Chapter 16.20 Shoreline Master Program

## SeaTac

- Chapter 2.46 Advisory Tree Board
- Chapter 13.190 Clearing and Grading Code
- Chapter 15.14 Tree Retention and Landscaping
- Chapter 15.30 Environmentally Sensitive Areas

## Normandy Park

- Chapter 13.20 Land Clearing, Grading and Filling
- Chapter 18.36 Critical Areas Development Rags.
- Hazard Tree Removal Permit

## Environmental Protection?

## City of Kent

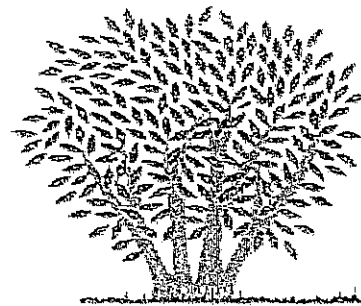
- Chapter 11.03 Environmental Policy
- Chapter 11.04 Shoreline Management
- Chapter 11.06 Critical Areas
- Hazard Tree Removal/Pruning in Critical Area Request
- Cite ISA standards

## Federal Way

- Chapter 15.05 Shoreline Management
- Chapter 15.10 Critical Areas
- Chapter 19.120 Clearing, Grading and Tree and Vegetation Retention
- Chapter 19.160 Geologically Hazardous Areas
- Administrative Review

# Coppicing

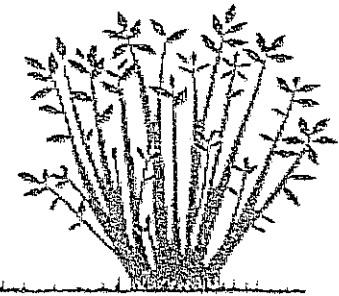
A forestry practice in which trees are cut at the ground and allowed to re-sprout from the stumps. Used to produce biomass, fuel wood, or poles of a particular specification. While sometimes described as basal pollarding, it is not a pruning technique.



BEFORE  
TREE TO BE  
COPPICED



CUT CLOSE  
TO BASE IN  
WINTER



FOLLOWING SPRING  
SHOOTS RAPIDLY  
REGROW FROM STOOL

1-20 YRS LATER  
COPPICE READY  
FOR HARVEST



Document Sources: <http://www.isa-arbor.com/education/onlineresources/dictionary.aspx>  
<http://www.arborrectreecare.co.uk/tree-pruning-and-trimming>  
<http://vergepermaculture.ca/wp-content/uploads/Coppice-trees-blog-front-photo1.jpg>



# Forestry Practice in Washington

---

- Relates to the growing, harvesting, or processing of timber for commerce.
- Regulated by Forest Practices Act (Chapter 76.09 RCW).
- Rules established by Washington Forest Practices Board.
- Administered by Department of Natural Resources
- Best Management Practices:
  - Tree Protection on Construction and Development Sites:  
[http://www.dnr.wa.gov/Publications/rp\\_urban\\_treeprtctnguidbk.pdf](http://www.dnr.wa.gov/Publications/rp_urban_treeprtctnguidbk.pdf)
  - Tree Coppicing is not addressed.

# View Preservation

---

## ■ Legal Basis:

- The court of appeals affirmed this by stating that "aesthetic standards are an appropriate component of land use governance."
- Property owners are not "entitled" to view protection.
- Views are protected only to the extent that local ordinances provide for such protection.
- Zoning for aesthetics includes view protection regulations, historic preservation ordinances, design review standards, sign controls, and tree protection measures.

■ Des Moines does not have any view protection ordinances.

■ Some properties may have view covenants recorded on their property title.

# Potential Amendments to Substitute Draft Ordinance No. 14-043-A

---

- Amendment 1 - Council Amendment
- Amendment 2 – Liability Waiver
- Amendment 3 – Best Pruning Practices
- Amendment 4 – DMMC 18.195.130 Scenic View Preservation

# Permit Application and Fee Scenarios

Examples of Fee's for permits associated with trees and vegetation

	Exempt Tree ❶	Tree Permit ❷	Area			
			0 - 1,999 SF	2,000 - 6,999 SF	7,000 - 1 A.C.	> 1 AC
Non-Critical Area	N/A ❷	\$150	N/A ❷	\$300	\$1,500	\$1,500 ❸
Critical Area (without SEPA)	N/A ❷	N/A	\$225	\$525	N/A	N/A
Critical Area (with SEPA) ❹	N/A ❷	N/A	\$525	\$825	\$2,850	\$2,850 ❸

## NOTES

- ❶ Dead, Diseased, or Hazard Tree.
- ❷ No permit required.
- ❸ Plus \$114/AC (1-5 acres) and \$83/AC (>5 acres)
- ❹ SEPA fee = \$300.
- ❺ Additional fees may be required if expert reports are required.
- ❻ Regulations for work within a 200 feet of a shoreline are subject to SMP. SMP reviews range from \$175 - \$5,550
- ❼ Basic Tree Permit of \$150 is required only for the following circumstances:
  - 1) Removal of significant trees on undeveloped lot.
  - 2) Removal of tree within required landscape areas.
  - 3) Other unique situations.

Pat Bosmans, City Attorney  
 21630 11th Avenue So., Suite C  
 Des Moines, WA 98198  
 206.870.6553  
 Fax: 206.870.6872

**OFFICE OF THE  
 DES MOINES  
 CITY ATTORNEY**

# Memo

Date: October 30, 2014  
 To: Mayor and Councilmembers  
 From: Pat Bosmans, City Attorney  
 Re: Tree Cutting and Pruning and the City's Draft Ordinance

The intent of this memo is to answer the following questions:

What is a critical area in the City and do I live in one?

What is the authority for the City to regulate trees, tree pruning and views in critical areas?

Why do we need to protect critical areas?

What do I have to do if I want to cut or prune trees on my property or to cut or prune trees on my neighboring property owner/s's property that are located in a critical area?

Can I disturb critical areas?

What does the ordinance intend to regulate?

What if my neighboring property owner/s's won't let me cut trees on their property?

What if my neighboring property owner/s won't agree to allow tree cutting or pruning on their property?

Will the City protect my view?

- What is a critical area in the City and do I live in one?

Critical areas are wetlands, aquifer recharge areas, fish and wildlife habitat, frequently flooded areas, and geologically hazardous areas. Regulations and procedures related to critical areas are intended to protect the environment, human life, and property from harm

and degradation. Critical areas are best described by viewing the critical area maps for the City. There are seven kinds of critical areas:

- Critical Aquifer Recharge Areas
- Drainage Basins
- Frequently Flooded Areas
- Geologically Hazardous Areas
- Slope and Topography
- Wetlands and Surface Water
- Fish and Wildlife Conservation Areas

This inventory is based on City, other agency, or property owners initiated inventories as well as an accumulation of existing information collected from other local, state, and federal agencies. On a citywide scale, it is not possible to identify all critical areas. Therefore, not all critical areas are included in this inventory. The map inventory is provided to the community as the best available information.

Careful site-specific investigation will also be required in conjunction with specific proposals for work within a critical area.

#### Visual Inspection

A second source of information involves a visual inspection of property. In some instances, conditions within critical areas such as surface water, geological, and topographic conditions are easily identified. However, conditions in other critical areas, such as special wildlife habitat or subsurface geological conditions, may not be so straight forward. In those cases, research of other information sources such as conservation maps or wildlife habitat inventories may be beneficial.

#### Experts

A third source of information involves the use of experts hired to investigate site conditions. In most cases, City codes require that expert analysis be provided in conjunction with proposals when critical area conditions are encountered. Therefore, it is important to bring experts into the process as early as possible.

#### • What is the authority for the City to regulate trees, tree pruning and views in critical areas?

Critical areas are regulated by federal, state and local laws. Understanding the laws and the interplay between these laws is not easy to simplify but essentially the important federal laws are the Environmental Protection Act, and the Clean Water Act which establishes the National Pollution Discharge Elimination permit requirements for storm water), state laws are the State Environment Policy Act, Growth Management Act, and the Shoreline Management Act, the City's regulations that are required by the federal and state laws. To comply with the federal and state laws the City, like all other cities has



adopted local ordinances to protect critical areas. An important component of protecting critical areas is the protection of trees and other vegetation within those areas. (For more information on the applicable federal, state and local laws see the attached Environmental Laws and Authorities memorandum.)

- *Why do we need to protect critical areas?*

Des Moines has adopted and administers regulations related to work in and around each of the critical areas mentioned above. To protect the environment, human life, and property from degradation, critical area regulations: preclude, regulate, or limit development activity, including removal of trees and other vegetation, in areas where such activities pose serious threat to the resource or result in potential hazards; preserve and protect the quality of drinking water; and preserve important ecological areas such as steep slopes, streams, lakes, and wetlands. Benefits of these regulations include protection of water quality (including drinking water), groundwater recharge, shoreline stabilization, stream flow maintenance, stability of slopes, wildlife and fisheries habitat, protection of human life and property, and maintenance of natural stormwater storage systems.

- *What do I have to do if I want to cut or prune trees on my property or to cut or prune trees on my neighboring property owner/s' property that are located in a critical area?*

Projects involving work proposed within critical areas often require expert technical assistance to provide information, mapping, studies, materials, inspections, and/or reviews that are reasonably necessary to determine the effects of a proposed activity on the subject critical area(s). Necessary maps, studies, materials, inspections and/or review are an expense borne by the applicant. The City requires that such work be provided or performed by a qualified professional acceptable to the City. You will be advised at the earliest possible point if your project will be subject to these types of reviews.

*Can I disturb critical areas?*

Des Moines Municipal Code does not allow use or disturbance of critical areas without prior City approval. Critical area regulations outline specific setbacks within which work may not occur, or is subject to special

approval. Minor activities such as maintenance, landscaping, and passive recreation improvements may be considered through an administrative review process. Projects involving construction, clearing, and grading within critical areas requires more extensive review, and in most cases allows public review and comment through the SEPA process, and potentially a public hearing.

- *What does the proposed ordinance intend to regulate?*

The intent of the draft ordinance is to clarify the City's existing tree regulations and to provide clarity. The draft ordinance limits regulation for the cutting or pruning of trees to critical areas and/or land clearing in excess of 2000 square feet. If you do not live in a critical area as shown on the maps above and/or you do not intend to clear more than 2000 square feet of property the draft ordinance does not control or regulate tree cutting or pruning on your private property.

- *What if my neighboring property owner/s won't let me cut trees on their property?*

Part of the process for doing work in the critical area may require that some of the work be done on neighboring property owner/s's property. The City will require the same expert reports for the work but will also require proof that the neighboring property owner/s agree and understand the nature of the work to be done on their property. The City will require that both you and neighboring property owner/s sign an agreement as to liability regarding you and your neighboring property owner/s's property and indemnify, i.e., protect the neighboring property owner/s and/or the City for the work to be done. In addition, if a permit is required to complete the work, your neighboring property owner/s will need to be a co-signatory on the permit application.

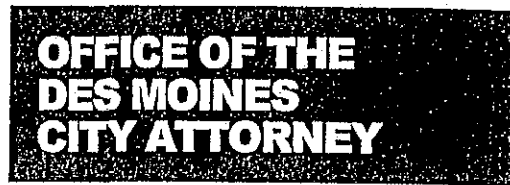
- *What if my neighboring property owner/s won't agree to allow tree cutting or pruning on their property?*

If your neighboring property owner/s won't allow you to do work on their property, and remember the City is also a neighboring property owner/s, then the work will not be permitted. The City will not interfere or intervene to compel the cutting or pruning of trees absent proof that the affected property owner(s) is(are) willing to allow the work.

- *Will the City protect my view?*

The City does not have the authority to order, compel or otherwise require property owners to cut or prune trees on the real property of others. Other than the limited exceptions provided under the Shoreline Management Act, and absent permission from neighboring property owner/s whose trees are blocking your view the City cannot compel tree cutting or pruning. See the discussion in the attached Environmental Laws and Authorities.

Pat Bosmans, City Attorney  
 21630 11th Avenue So., Suite C  
 Des Moines, WA 98198  
 206.870.6553  
 Fax: 206.870.6872



# Memo

Date: October 30, 2014  
 To: Des Moines City Council  
 From: Pat Bosmans, City Attorney  
 Re: Environmental Laws and Authorities

This memo provides an overview of the various federal and state statutes and local ordinances that regulate the environmental critical areas and tree removal and pruning. Specifically, this memo discusses the Growth Management Act and its environmentally critical areas requirements, the State Environmental Policy Act (SEPA), the Shoreline Management Act, the National Pollution Discharge Elimination System (NPDES), and View Preservation Ordinances. A brief introduction is given to each topic followed by relevant statutes, surrounding City's ordinances, and finally Des Moines' current applicable codes. Additional information can be found by following the links embedded in this memo.

## I. ENVIRONMENTALLY CRITICAL AREAS

### Introduction

All cities and counties in Washington are required to adopt critical areas regulations by the Growth Management Act (GMA) (RCW 36.70A.060). As defined by the GMA:

"Critical areas" include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas. [RCW 36.70A.030(5)]

Counties and cities are required to include the best available science in developing policies and development regulations to protect the functions and values of critical areas (RCW 36.70A.172). All jurisdictions are required to review, evaluate, and, if necessary, revise their critical areas ordinances according to an update schedule. MRSC's page on

GMA Plan/Development Regulations Updates provides additional information on the schedule and required updates.

### General Critical Areas Information

Some of the handbooks and guidance materials are older; however, they provide useful general information for updating critical areas ordinances.

- Critical Areas Ordinance Implementation Guidebook for Small Cities, Washington State Department of Community, Trade and Economic Development (now Department of Commerce), Growth Management Services, 06/2007 - Links to guidebook, appendices, and other useful information on critical areas and best available science
- Critical Areas Assistance Handbook: Protecting Critical Areas Within the Framework of the Washington Growth Management Act, Washington State Department of Community, Trade and Economic Development (now Department of Commerce), Growth Management Services, 01/2007.

### Legal References - Statutes and Administrative Regulations

- Ch. 36.70A RCW - Growth Management Act (see RCW 36.70A.060, RCW 36.70A.172, and RCW 36.70A.710)
- Ch. 365-190 WAC - Minimum guidelines to classify agriculture, forest, mineral lands and critical areas
- Ch. 365-195 WAC - Growth Management Act - Best Available Science
- WAC 365-196-485 - Critical areas (relationship to the comprehensive plan)
- WAC 365-196-830 - Protection of critical areas

365-195-900(2)

### Best Available Science (BAS)

Under the state GMA, local governments are required to use the best available science when reviewing and revising their policies and regulations on critical areas. The Department of Commerce, Growth Management Services, and the state Department of Ecology have provided helpful guidance on addressing the GMA's best available science requirements.

- Critical Areas and Best Available Science, Washington State Department of Commerce, Growth Management Services - Includes handbook, appendices, findings of fact, and local examples.
- Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas, Washington State Office of Community Development (now Department of Commerce), Growth Management Services, 03/2002.
- Best Available Science for Wetlands, Department of Ecology

- Local Government BAS Documents.

### Surrounding City Ordinances

- Federal Way Municipal Code Critical Areas [Chapter 14.30](#)
- Burien Municipal Code [Chapter 19.40](#)
- SeaTac Municipal Code Environmentally Sensitive Areas [Chapter 15.30](#)
- Kent Municipal Code Critical Areas [Chapter 11.06](#)
- Normandy Park Municipal Code Critical Areas Development Regulations [Chapter 18.36](#)

### Handouts and Application Forms

A few examples of critical areas handouts and application forms are presented here:

- • Burien [Critical Area Review Application and Informational Handout](#).
- Federal Way [Land Use Applications and Informational Handouts](#) - See multiple forms and handouts for various critical areas.
- Normandy Park [Critical Areas Ordinance Citizens Guide](#), 2010 - Development tool for residents and property owners.

To that end the City of Des Moines has adopted:

[Title 16 DMMC](#) (Environment) which contains regulations related to SEPA, Environmentally Critical Areas, Flood Hazard Areas, and the Shoreline Master Program.

Trees specifically are also addressed in chapter [18.195](#) DMMC Landscaping and Screening, chapter [14.20](#) DMMC, Land Filling, Clearing and Grading, chapter [17.35](#) DMMC, Layout and Design of Subdivisions and Similar Requirements, and also in individual zones including the Business Park and Institutional Campus.

## II. SHORELINE MANAGEMENT ACT

### Introduction

The Shoreline Management Act, like the State Environmental Policy Act (SEPA), was enacted in 1971, and its purpose is to manage and protect the shorelines of the state by regulating development in the shoreline area. A major goal of the Act is "to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." Its jurisdiction includes the Pacific Ocean shoreline and the shorelines of Puget Sound, the Strait of Juan de Fuca, rivers, and streams and lakes above a certain size. It also regulates "wetlands" associated with these shorelines. The Shoreline Management Act is found in [Ch. 90.58 RCW](#). For an overview of this legislation, see the Department of Ecology's [Shoreline Management home page](#). Legislative establishment is cited below:

This chapter establishes a cooperative program of shoreline management between local government and the state. *Local government shall have the primary responsibility for initiating the planning required by this chapter and administering the regulatory program consistent with the policy and provisions of this chapter.* The department shall act primarily in a supportive and review capacity with an emphasis on providing assistance to local government and on insuring compliance with the policy and provisions of this chapter. RCW 90.58.050 (emphasis added).

The primary responsibility for administering this regulatory program is assigned to local governments. Local governments have done so through the mechanism of shoreline master programs, adopted under rules established by the Department of Ecology (DOE), that establish goals and policies that are implemented through use regulations. No substantial development is permitted on the state's shoreline unless a permit is obtained from the local jurisdiction. DOE has adopted shoreline master program guidelines, Ch. 173-26 WAC, effective January 17, 2004. For background regarding the adoption of these new guidelines, see DOE's Shoreline Master Program Guidelines Home. Cities and counties are required to update their shoreline master programs to be consistent with the new guidelines according to a schedule adopted under 2003 legislation (SSB 6012). See also DOE's Shoreline Master Program Update Schedule page.

#### Legal References - Statutes and Administrative Regulations

- Ch. 90.58 RCW - Shoreline Management Act.
- Ch. 173-26 WAC - Shoreline master program guidelines.
- Ch. 173-27 WAC - Shoreline management permit and enforcement procedures.
- Pres. Our Islands v. Shorelines Hearings Bd., 133 Wn. App. 503 (2006), review denied, 162 Wn.2d 1008 (2008) - GMA/SMA priority:

*RCW 36.70A.480 does not mandate that the policies and regulations of the SMA take priority over policies and regulations adopted under the GMA. On the contrary, the statute requires that regulations implementing the two acts be harmonized in the process of overall land use planning and regulation and specifically states that a county's shoreline master program goals and policies are part of its growth management comprehensive plan.*

### Surrounding City Ordinances and Guidelines

- Kent Municipal Code Chapter 11.04 Shoreline Master Program  
<http://www.codepublishing.com/WA/Kent/?Kent11/Kent1104.html#11.04.010>
- Burien Municipal Code Title 20 BMC, [Shoreline Master Program](#)
- Sea Tac Municipal Code Title 18 SMC, [Shoreline Management Code](#)
- Normandy Park Municipal Code Chapter 16.16 Shoreline Management, [Master Program Policy Elements](#)
- Federal Way Municipal Code Chapter 15.05, [Shoreline Management](#)

### Additional References:

- [Shoreline Management](#), Washington State Department of Ecology
  - [Citizen Guide to Shoreline Master Programs](#)
  - [Introduction to the Shoreline Management Act](#)
  - [Recent Amendments to the SMA and GMA](#)

To that end the City of Des Moines has adopted:

Shoreline Master Program [chapter 16.20 DMMC](#) and Shoreline Master Program [Ordinance No. 1502](#)

The Shoreline Master Program addresses vegetation conservation in the following section:

#### 6.1.2 Vegetation Conservation

1. Land within shoreline and critical buffer areas extending from marine ordinary high water mark, as described in Section 6.1.1(2), shall be considered vegetation conservation areas. Native shoreline vegetation that has not been otherwise disturbed by legal means shall be preserved to the maximum extent feasible within the vegetation conservation area consistent with safe construction practices, and other provisions of this chapter. Native trees and shrubs shall be preserved to maintain and provide shoreline ecological functions such as habitat, shade, and slope stabilization.
2. The following minimum standards for shoreline and critical area vegetation conservation shall apply:
  - a. In the event buffers for more than one designated critical area per DMMC 18.86 are applicable, the most protective standards for vegetation conservation shall apply;



- b. No more than 15 percent of the area with native shoreline vegetation shall be cleared within the vegetation conservation area;
- c. All native trees in the vegetation conservation area over 20 inches in diameter at breast height shall be retained. Trees determined by the City to be hazardous or diseased may be removed. Replacement of non-native vegetation with native species shall be done in a manner that will not leave soil bare or vulnerable to erosion.
- d. The Shoreline Administrator may allow removal of vegetation exceeding that described above where an applicant agrees to replacement plantings that are demonstrated to provide greater benefit to shoreline ecological functions than would be provided by strict application of this section, based upon the findings from the 2005 Shoreline Inventory and Characterization. (emphasis added).

### III. State Environmental Policy Act (SEPA)

#### Introduction

Chapter 43.21C RCW, State environmental policy, sets forth its purpose in RCW 43.21C.010, and provides a more specific listing of the Act's intent and purposes in RCW 43.21C.020, all focused on ". . . the critical importance of restoring and maintaining environmental quality to the overall welfare and development of human beings . . ." (RCW 43.21C.020(1)). SEPA's basic policy of maintaining and improving environmental quality is implemented primarily through extensive procedural requirements designed to insure that governmental agencies give proper consideration of environmental matters in making decisions on actions, whether proposed by private parties or the governmental entities themselves that may impact the environment.

If initial governmental review of a proposed action indicates that the action will have probable and significant adverse environmental impacts, preparation of a detailed environmental impact statement (EIS) will be required. The procedural requirements governing this environmental review process are contained in detailed regulations enacted by the Department of Ecology (DOE) in Chapter 197-11 WAC.

The specific mandate for municipal corporations such as the City is found in RCW 43.21C.030 which states in pertinent part as follows:

- (2) all branches of government of this state, including state agencies, municipal and public corporations, and counties shall:
  - (a) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and

the environmental design arts in planning and in decision making which may have an impact on man's environment;" (Emphasis added.)

### Legal References - Statutes and Case Law

SEPA mandates that environmental values be taken into account in governmental decision making. See *Norway Hill Preservation and Protection Ass'n v. King County*, 87 Wn.2d 267, 277-278 (1976) wherein the court stated:

. . . it is clear that the legislature intended that environmental values be given full consideration in government decision making, and it implemented this policy through the procedural provisions of SEPA which specify the nature and extent of the information that must be provided, and which requires its consideration, before a decision is made.

The linking of a governmental action with the application of SEPA is also identified in the statutory provisions concerning Appeals.<sup>1</sup>

See also RCW 43.21C.240, Project review under the growth management act (environmental review as applied to "project actions").

The "decision making" or "governmental action" subject to the act is not, however, specifically defined by SEPA, but is specifically addressed in the applicable WAC provision. By statutory mandate these provisions are accorded "substantial deference." (RCW 43.21C.095).

Specifically, action sufficient to trigger environmental review is defined in WAC 197-11-704(1)(a), which states in pertinent part as follows:

. . . new and continuing activities (including projects and programs) entirely or partly financed, assisted, conducted, regulated, licensed, or approved by agencies; (Emphasis added.)

WAC 197-11-704(2)(a)(i) further defines "project action" as an agency decision to:

License . . . any activity that will directly modify the environment.

WAC 197-11-704(3) concludes:

---

<sup>1</sup> RCW 43.21C.075 Appeals. Because a major purpose of this chapter is to combine environmental considerations with public decisions, any appeal brought under this chapter shall be linked to a specific governmental action. The State Environmental Policy Act provides a basis for challenging whether governmental action is in compliance with the substantive and procedural provisions of this chapter. The State Environmental Policy Act is not intended to create a cause of action unrelated to a specific governmental action. (Emphasis added).

"Actions" do not include the activities listed above when an agency is not involved. . . .

WAC 197-11-760 defines license as follows:

"License" means any form of written permission given to any person, organization, or agency to engage in any activity, as required by law or agency rule. A license includes all or part of an agency permit, certificate, approval, registration, charter, or plat approvals or rezones to facilitate a particular proposal. The term does not include a license required solely for revenue purposes.

See also WAC 197-11-055(2)(a), which states "A proposal exists when an agency is presented with an application . . ."

#### Surrounding City Ordinances and Information

- Federal Way Municipal Code Title 14 - Environmental Policy
- Kent Municipal Code Ch. 11.03 - Environmental Policy
- Burien Municipal Code Title 14 - State Environmental Policy Act Procedures
- SeaTac Municipal Code Chapter 16A.23 - Environmental Rules/Procedures  
<http://www.codepublishing.com/WA/SeaTac/?Seatacl6A/Seatacl6A23.html#16A.23.010>
- Normandy Park Municipal Code Chapter 13.12 – SEPA Rules  
<http://www.codepublishing.com/wa/normandypark/?NormandyPark13/NormandyPark1312.html#13.12.010>

To that end the City has adopted:

Chapter 16.05 DMMC - SEPA

## IV. NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES)

### Introduction

Under the federal Clean Water Act regulations, local governments in the Puget Sound Basin and those subject to the federal National Pollutant Discharge Elimination System (NPDES) Storm Water Program are required to have stormwater management programs. As authorized by the Clean Water Act, the U.S. Environmental Protection Agency's NPDES permit program controls water pollution by regulating point sources that discharge pollutants into waters of the United States. The Washington State Department of Ecology (DOE) administers the federal NPDES program in the state. See DOE's Municipal Stormwater Permits page.

The listing of salmon under the Endangered Species Act (ESA) requires that streams and wetlands be protected (see MRSC pages on ESA Salmon/Bull Trout). All local governments with salmon habitats are encouraged to develop storm water management plans. Those seeking 4(d) rule exemptions will be required to meet National Marine Fisheries Service (NMFS) stormwater requirements.

#### General NPDES Information

- The Need for Storm and Surface Water Management
- Federal and State Storm and Surface Water Regulations
- Best Management Practices (BMPs) for Storm and Surface Water Management
- Erosion and Sediment Control: Land Clearing and Grading

#### Surrounding City Ordinances and Information

- Federal Way – Stormwater Management Program – 2014 Update  
<http://www.cityoffederalway.com/documentcenter/view/4789>
- Kent – NPDES information and Links <http://kentwa.gov/npdes/?terms=stormwater>
- SeaTac - Stormwater Management Program Plan – 2014 Update  
<http://www.ci.seatac.wa.us/Modules/ShowDocument.aspx?documentid=8728>
- Burien - 2014 Stormwater Management Program Plan (SWMP)  
<http://www.burienwa.gov/documentcenter/view/859>
- Normandy Park – Stormwater Management Plan – 2013 Update  
[http://www.ci.normandy-park.wa.us/vertical/sites/%7BD313ED69-120E-439F-83D7-8BBE7447C948%7D/uploads/Normandy\\_Park\\_SWMP\\_2013\\_Update\\_pl.pdf](http://www.ci.normandy-park.wa.us/vertical/sites/%7BD313ED69-120E-439F-83D7-8BBE7447C948%7D/uploads/Normandy_Park_SWMP_2013_Update_pl.pdf)

To that end the City has adopted:

Chapters 11.08 DMMC, Surface Water Management Program, and chapter 11.20 DMMC, National Pollution Discharge Elimination System Program (NPDES)

## V. VIEW PRESERVATION

Cities may consider aesthetics in regulating the use of land. The legal basis for aesthetic zoning has been established in case law for many years – but there's not much case law on the subject. The court of appeals affirmed this by stating that "aesthetic standards are an appropriate component of land use governance." *Anderson v. Issaquah*, 70 Wn. App. 64, 82 (1993). Zoning for aesthetics includes view protection regulations, historic preservation ordinances, design review standards, sign controls, and tree protection measures.

Zoning laws based primarily on aesthetic considerations must be, like all exercise of the police power, reasonably related to the ends sought to be achieved. Such laws and ordinances will be closely considered to determine their reasonableness in achieving their goals. Further, zoning laws based upon aesthetics must provide clear standards for their application to limit the enforcing authorities, exercise of discretion. Since aesthetics is generally a subjective matter, this is particularly important. (See *Anderson v. City of Issaquah*, 70 Wn. App. 64, 82-83 (1993) (ordinance was too vague); *Duckworth v. City of Bonney Lake*, 91 Wn.2d 19, 30 (1978) (aesthetic considerations alone may not support invocation of the police power).

Property owners are not “entitled” to view protection. Views are protected only to the extent that local ordinances provide for such protection.

In determining that there was no common law right to a view, the *Collinson* court relied on a 1908 Washington State Supreme Court case that held that a person may build a structure as high as he wants on his own property without liability for nuisance to a neighbor even if the structure completely blocked the neighbor's light and air. *Karasek v. Peier*, 22 Wash. 419, 427, 61 P. 33 (1900). But where the neighbor had rights conferred by statute, a neighbor could enforce those rights in a nuisance action. *Karasek*, 22 Wash. at 428. And a zoning ordinance can create a property right. *Asche v. Bloomquist*, 132 Wn. App. 784, 797-98 (2006). A recent view protection situation in Clyde Hill garnered a lot of attention because it involved a former Major League baseball player; see *Tree battle in Clyde Hill ends; Olerud to pay for view*, *Seattle Times*, 1/7/2013.

View protection is given some statutory recognition in the SMA, which provides at RCW 90.58.320:

No permit shall be issued pursuant to this chapter for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

See *State v. Pacesetter Constr. Co.*, 89 Wn.2d 203, 211-12 (1989) (the loss of view substantially reduces the values of the shoreline properties, thus entitling them to protection against that economic loss without payment by the state of just compensation.)

### Surrounding City Ordinances and Information

- Federal Way Municipal Code 18.55.080 – View Considerations  
<http://www.codepublishing.com/WA/FederalWay/>:

(1) Design of new land divisions adjacent to existing development should assess the potential blockage of existing views and utilize methods such as staggered or offset lot lines and building areas so as to reduce horizontal view blockage.

(2) Where feasible, land division design shall recognize and preserve important view corridors by proper location of street rights-of-way, view conservation easements or other means.

- Kent Municipal Code 15.080.060 - View Corridor Protection  
<http://www.codepublishing.com/WA/Kent/?Kent15/Kent1508.html#15.08.060>  
 The visual environment of the city of Kent is strongly characterized by scenic vistas to the Green River valley from the slopes of the East and West Hills which frame the valley. The purpose of the view regulations set out in this section is to regulate the height and location of buildings on hillsides in order to protect view corridors to and from these hillsides which are on the visual forefront of the city and encourage placement of residences in ways which are compatible with the preservation of such public vistas.
- SeaTac Municipal Code 15.13.110 – **Only applicable in specific zones.**  
<http://www.codepublishing.com/WA/SeaTac/?Seatac15/Seatac1513.html#15.13.110>  
 Buildings shall accentuate the natural topography and preserve important view corridors where appropriate.
- Burien Municipal Code 12.38.040 – Tree Protection, Maintenance and Permits  
<http://www.codepublishing.com/WA/Burien/?Burien12/Burien1238.html#12.38.040>  
 (c) A tree permit shall not be granted if the sole purpose of the proposed action is the removal of a tree for view enhancement.
- Normandy Park Municipal Code 18.36.100  
<http://www.codepublishing.com/wa/normandypark/?NormandyPark18/NormandyPark1836.html#18.36.100>  
 (b) Tree Maintenance and Approval. The following tree and shrub maintenance and removal is permitted with approval of the city:
  - (i) Removal and/or maintenance of hazardous trees.
  - (ii) *Preventative and view enhancing measures that are not injurious to the tree.*
  - (iii) All work done under the supervision of a qualified arborist or a professional horticulturist.
  - (iv) The city is notified before all work is commenced.
  - (v) Part of an approved development permit or voluntary correction agreement as allowed by NPMC 18.36.240(4).
  - (vi) *Topping of trees is not permitted. (emphasis added).*

To that end the City has adopted:

In the City of Des Moines, view preservation (other than walls, hedges, fences, etc.) is addressed in the Landscaping and Screening Code, chapter 18.195 DMMC:

Scenic view preservation DMMC 18.195.130.

Landscaping shall be designed, installed, and thereafter maintained in such a manner which preserves scenic views and vistas of neighborhood and upland properties. Under no circumstances shall species of trees be planted which by virtue of their height and/or breadth at maturity impinge upon the views of other properties.

This chapter regulates construction in building sites in accordance with an approved site plan and specifically provides as an exception construction of single-family residential development activities:

(2) Exceptions. The provisions of this chapter shall not apply in the following circumstances:

(a) Single-family residential development activities shall not be subject to the provisions of this chapter except as may be specifically required by any section. DMMC 18.195.020.



## Relevant City Goals, Policies and Strategies

### City Council

The following goals, resolutions and ordinances related to environmental, critical area, shoreline and environmental protection were adopted by the Des Moines City Council:

Council Goal 11: Protect the natural environment.

Resolution No. 1199: *Environmental Stewardship Policies for the City of Des Moines*

Ordinance No. 1400: Environmentally Critical Area Ordinance

Ordinance No. 1502: City of Des Moines Shoreline Master Program

### Comprehensive Plan Goals, Policies and Strategies

The following are excerpted Comprehensive Plan Goals, Policies and Strategies related to environmental, critical area, shoreline and tree/vegetation protection:

#### Land Use Element:

Goal 2-01-01. Preserve and enhance the diverse residential neighborhoods of the community and serve them with vibrant business districts, open space, recreational facilities, affordable housing, and other supportive land uses; protect environmentally critical areas, and promote economic development.

Policy 2-03-02. Preserve open spaces where appropriate to:

- (1) Protect environmentally critical areas;
- (2) Protect endangered and threatened species;
- (3) Provide visual separation between land use, neighborhood and city boundaries; and
- (4) Moderate the environmental and visual impacts of new development.

#### Transportation Element:

Strategy 3-05-08. Environmental.

- (1) Construct roads and other transportation facilities to minimize adverse impacts upon surface water runoff, drainage patterns, and environmentally critical areas

#### Conservation Element:

All goals, policies and strategies relate to protection of environmentally critical areas. The following policy and strategy excerpts specifically relate to the preservation and management of trees and vegetation. The Conservation Element is included in its entirety at the end of this section:

Policy 4-03-01. Plan and encourage sound management of natural resources--land, air, water, vegetation, fish, wildlife, and energy--considering entire watersheds and regional influences.

Policy 4-03-04. Provide protections for critical areas within shorelines, as designated by the City's Shoreline Management Program. Review and revise the City's Shoreline Management Program, at least every five years to ensure protection of the ecological functions and values of shorelines from cumulative adverse environmental impacts, and to ensure compliance with the requirements of the Growth Management Act.

Policy 4-03-05. Explore approaches to regulations and procedures that streamline the permit review process for development in or near shorelines and critical areas.

Policy 4-03-08. Promote the preservation of native vegetation and mature trees; revegetation; and appropriate landscaping to improve air and water quality and fish and wildlife habitat.

**Strategy 4-04-01, Conservation Planning:**

- (5) Regulate and plan land use and condition development proposals in ways that protect mature trees, native vegetation, stream flow, fish and wildlife habitat, groundwater recharge, and air quality, as well as natural topographic, geologic, and hydrologic features.
- (7) Maintain and monitor the Shoreline Master Program to control and regulate development in the shoreline area.

**Strategy 4-04-02, Environmentally Critical Areas:**

- (2) Plan and encourage sound management of natural resources--land, air, water, vegetation, fish, wildlife, and energy--considering entire watersheds and regional influences.
- (3) The City of Des Moines shall evaluate programs and regulations to determine their effectiveness in contributing to ESA listed species conservation and recovery, and shall update and enhance programs and plans where appropriate including evaluation of the Zoning Code, the Critical Areas Ordinance, the Shoreline Master Program, the clearing and grading regulations, the landscaping regulations, best management practices for vegetation management and use of insecticides, herbicides and fungicides. The City of Des Moines shall amend these regulations, plans and best management practices to enhance their effectiveness in protecting and restoring salmonid habitat, taking into consideration the model program developed by the Tri-County Salmon Conservation Coalition and the recommendations of shared strategy.
- (4) Require that development proposals contain measures to stabilize soils, hillsides, bluffs and ravine sidewalls and promote wildlife habitat by retaining critical areas of existing native vegetation.
- (5) Regulate development on bluffs and ravine sidewalls, and require a buffer of undisturbed native vegetation adjacent to them that is adequate in size to insure human safety, health and welfare and to restore and preserve other functions served by bluffs and ravines.

**Strategy 4-04-06, Air:**

- (2) When other trees are not available or do not provide the needed screening, require that planting and maintenance of trees be an integral part of City street development standards. Require all developments to include landscaping improvements using trees, shrubs, and ground covers. Undertake measures to ensure the survival and good health of trees and plants.

**Parks, Recreation and Open Space Element:**

Findings 6-02-02. Parks and conservancy areas can preserve and protect critical areas and wildlife habitat, provide natural areas in urban areas, and allow for certain low impact recreational opportunities.

**Policy 6-03-01, Acquisition:**

- (5) Parks and conservancy areas can preserve and protect critical areas and wildlife habitat, provide natural areas in urban areas, and allow for certain low impact recreational opportunities.

Strategy 6-04-05. Parks and conservancy areas can preserve and protect critical areas and wildlife habitat, provide natural areas in urban areas, and allow for certain low impact recreational opportunities.

- The park or recreation area contains critical areas as defined in the Zoning Code that serves a significant role or provides a significant function in the natural systems within Des Moines.

Marina District Element:

Strategy 10-04-01. Ensure that street trees are planted throughout downtown.

Pacific Ridge Element:

Strategy 11-04-08. Ensure that street trees are planted throughout the Pacific Ridge.

Appendix B: City of Des Moines Buildable Lands Report and Household Growth Targets:

The City's Buildable Lands Report considered environmentally critical areas to determine the amount of land suitable for urban development, and to evaluate its capacity for growth.



## CHAPTER 4 : CONSERVATION ELEMENT

### 4-01 GOALS

- 4-01-01 To protect, improve, and sustain environmental quality through best management practices and the use of best available science.
- 4-01-02 To protect environmentally critical areas from damage caused by encroachment and development.
- 4-01-03 To prevent flooding, erosion, sedimentation, water quality, and habitat degradation, and to protect, restore, and enhance all surface waters.
- 4-01-04 To conserve and replenish fish and wildlife resources.
- 4-01-05 To protect, improve, and sustain ground water quality and quantity through best management practices, and sound and innovative environmental management.
- 4-01-06 To protect critical areas from noise impacts.
- 4-01-07 To protect all streams and wetlands that are in the public interest.
- 4-01-08 To protect species and their habitats that have been identified as endangered, threatened, or sensitive by the State and Federal governments.

### 4-02 BACKGROUND AND CONTEXT

- 4-02-01 The City of Des Moines has a natural resource base of land, air, water, vegetation, fish, wildlife, and energy.
- 4-02-02 Development and urbanization have resulted in serious environmental problems, including but not limited to, flooding; elimination of fish and wildlife habitat; pollution of land, water and air; inefficient energy use; noise; and soil and geologic instability.
- 4-02-03 Sound planning, best management practices, , best available science (BAS), wise purchases, and application of technology can assist in protecting the remaining natural resource base from further loss or degradation, and can restore or improve the previously lost or degraded natural resource base.
- 4-02-04 Both individually and interacting as a whole, natural resources provide the essential elements for human life. Moreover, they provide valuable functions to the City of Des Moines, including: control of flooding, surface water runoff, erosion, and sedimentation; groundwater and aquifer recharge; soil and geologic stability; air and water cleansing; and habitat for flora and fauna.

4-02-05 The uplands and lowlands of the City of Des Moines are linked through the hydrologic cycle. Many of the impacts of urbanization are related to changes in hydrologic processes. Therefore, by focusing planning efforts on watersheds, impacts of development can be better estimated and understood, and solutions better implemented.

4-02-06 The natural resources of the City of Des Moines are affected by regional influences. Environmental processes and problems do not obey jurisdictional boundaries. Cooperative environmental management among neighboring jurisdictions, tribes, and state and federal agencies can prevent or overcome regionally influenced problems.

4-02-07 Pollution prevention and environmental improvements require an ongoing commitment from an informed, involved public.

4-02-08 The natural landscape of the City of Des Moines is made up of various streams, wetlands, shorelines, hillsides, forests and fields. Development has significantly disturbed the natural environment. However, the remaining environmentally critical areas, also referred to as sensitive areas, are important contributors to the City of Des Moines natural resource base and high quality of life.

4-02-09 The GMA requires that the City of Des Moines designate its critical areas and develop policies and development regulations to protect the functions and values of critical areas using "best available science" (BAS).

4-02-10 Critical areas within the City of Des Moines include wetlands, streams, areas with a critical recharging effect on aquifers, frequently flooded areas, geologically hazardous areas, and fish and wildlife habitat conservation areas. The locations of critical areas within the City of Des Moines are shown in figures 4-1 through 4-7.

4-02-11 Critical areas are unique resources, which if preserved and protected, can protect public and private resources from damage or loss due to flooding, erosion, landslides, seismic and volcanic events, soil subsidence, or steep slope failures. Environmentally critical areas also protect ground and surface water quality and quantity. Critical areas are also part of the aesthetic resources in the City and form distinctive features of natural lands and wooded hillsides.

4-02-12 Surface water management becomes more critical with urbanization as natural areas are covered with impervious surfaces such as buildings, streets, and parking lots. The City of Des Moines' surface water management program includes prevention and mitigation of problems due to flooding, erosion, and sedimentation.

4-02-13 State Law (RCW 35. 27.370) grants the City of Des Moines specific authority to prevent and abate the pollution of surface water inside and outside the City and to enact ordinances that contain enforcement provisions.

4-02-14 The City of Des Moines's adopted surface water management program contains policies, and programmatic recommendations that enhance the City of Des Moines' ability to effectively manage surface waters. The surface water management plan and individual basin plans are developed with the cooperation of other affected jurisdictions. The City of Des Moines

also operates a number of capital facilities that reduce flooding, erosion, and sedimentation; mitigate habitat loss; enhance ground water recharge; and prevent water quality degradation.

4-02-15 The Growth Management Act requires that cities give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. The City must also include best available science when developing protection policies.

4-02-16 Open spaces, critical areas and public watersheds provide benefits to wildlife. Preserving these resources also serves to protect wildlife.

4-02-17 The goal of conserving fish and wildlife habitat can be achieved through the implementation of several strategies, including: a) identification and protection, or purchase, of critical fish and wildlife habitat conservation areas; b) linking those critical habitat areas with other protected lands, and c) integrating fish and wildlife habitat and conservation goals into new and existing developments.

4-02-18 Since fish and wildlife and their habitats do not respect political boundaries, linkages of critical habitat areas should be made across boundaries.

4-02-19 Buffer requirements for streams and wetlands intended to protect wildlife resources in those critical areas were established using "best available science." Development regulations have also been established to protect areas with critical fish and wildlife habitat.

4-02-20 The most effective way to protect and enhance native fish populations is through protection of river, stream, and creek channels, riparian corridors, lakes, wetlands, and watersheds that provide or impact spawning and rearing habitat, food resources, and fish passage. Intermittent streams can also be critical to native fish populations. Presently, fish enhancement facilities and programs are critical to the maintenance of salmon stocks and the fisheries industry.

4-02-21 Protection of isolated blocks of habitat may not adequately protect wildlife in the City of Des Moines -- critical fish and wildlife habitats and refuges may need to be connected across the landscape through a system of habitat corridors. Some areas may be important because they serve as vital linkages among habitat areas.

4-02-22 A key element in a comprehensive wildlife protection program is to encourage integration of wildlife habitat into new developments when possible. Protection of wildlife does not need to be at odds with land development.

4-02-23 Consideration of fish and wildlife during site design and construction can help to protect and preserve habitat areas.

4-02-24 Benefits to wildlife are enhanced when on-site landscaping includes native vegetation. Retention of natural vegetation can often provide similar aesthetic benefits as areas landscaped with non-indigenous plant materials.



4-02-25 Policies in other elements that recognize the value of natural amenities and wildlife habitat also serve to meet the goal of integrating wildlife habitat and new development.

4-02-26 Integrating wildlife goals with public land uses, such as parks, landscaping along roadways, stormwater control facilities, and landscaping around government buildings can help provide important habitat areas.

4-02-27 Ground water is an important source of water used in the City. In the future, ground water may provide a greater percentage of our water supply needs.

4-02-28 Rainfall that enters the ground replenishes ground water and provides base flow for streams, wetlands and rivers during periods of limited rainfall. This base flow sustains fish, wildlife, their habitats, and recreational values.

4-02-29 The natural hydrologic cycle can be altered by development practices and overuse of the aquifer. The result may be depletion of aquifers.

4-02-30 Groundwater is subject to contamination from human activity. The cost of protection is considerably less than the cost of remediation and replacement.

4-02-31 The Growth Management Act requires the designation of "areas with a critical recharging effect on aquifers used for potable water." The procedural criteria to classify critical areas (chapter 365-190 WAC) further defines these areas as areas where an aquifer is a source of drinking water and is vulnerable to contamination that would affect the potability of the water. It is difficult to define and map ground water recharge areas because ground water systems are hydrologically and geologically complex.

4-02-32 Wellhead protection studies are required by the 1986 amendments to the Federal Safe Drinking Water Act. The three water districts that provide the City's water; King County Water District 54, Highline Water District, and Lakehaven Utility District, have completed such studies. The studies provide additional information about contamination susceptibility of aquifers and also increase understanding of where aquifer recharge areas are located.

4-02-33 The functions and values of environmentally critical areas can be severely damaged by improper clearing, grading, filling, refuse dumping, and construction. Such actions need to be reviewed for significant adverse environmental impacts before approval.

4-02-34 Scientific research has determined that wetlands are best protected by undisturbed buffer areas. Undisturbed buffers are vegetated areas in which no development occurs. The wetland buffer provides food, cover, travel routes, and roosting and nesting sites for many wildlife species. Wetland buffers are also critical to wetland ecology. Construction near or within a wetland or its buffer area can reduce or eliminate these habitat functions. Construction can lead to erosion and increased surface runoff that can cause silt and contaminants to enter the wetland. When upland buffers are present between the development and the wetland, the buffer receives the majority of the impact, thereby protecting the wetland.

4-02-35 Scientific research has determined that watercourses are best protected by undisturbed buffer areas. In addition to protecting the watercourse, the buffer protects adjacent upland areas from flooding while also providing wildlife habitat. The critical functions of the buffer include shading, input of organic debris, nutrient uptake, bank stabilization, and the interception of sediment.

4-02-36 Scientific research has determined that unstable slopes are best protected by undisturbed buffer areas. Certain hillsides in the City of Des Moines are either unstable or susceptible to instability when disturbed. These hillsides are underlain by permeable soils, and are subject to seepage. They also include areas that have experienced landslides in the past and have slopes that are being undermined by stream or beach erosion. Construction in these areas is expensive and difficult. Landslides on such slopes can result in enormous public and private costs, and severe threats to public safety and natural resources.

### 4-03 POLICIES

4-03-01 Plan and encourage sound management of natural resources--land, air, water, vegetation, fish, wildlife, and energy--considering entire watersheds and regional influences.

4-03-02 Review and revise the City's Critical Areas Ordinance, at least every five years, to ensure protection of the ecological functions and values of critical areas from cumulative adverse environmental impacts; and to ensure compliance with the requirements of the Growth Management Act.

4-03-03 Include "best available science" when reviewing, revising, or developing policies and development regulations to protect the functions and values of critical areas, giving special consideration to the protection of anadromous fisheries.

4-03-04 Provide protections for critical areas within shorelines, as designated by the City's Shoreline Management Program. Review and revise the City's Shoreline Management Program, at least every five years to ensure protection of the ecological functions and values of shorelines from cumulative adverse environmental impacts, and to ensure compliance with the requirements of the Growth Management Act.

4-03-05 Explore approaches to regulations and procedures that streamline the permit review process for development in or near shorelines and critical areas.

4-03-06 Balance social, economic, and environmental goals to land use planning activities.

4-03-07 Work with citizens, land owners, businesses, neighboring cities, King County, special purpose districts, and private and public agencies to protect and improve environmental quality, seeking shared responsibility and uniform environmental management.

4-03-08 Promote the preservation of native vegetation and mature trees; revegetation; and appropriate landscaping to improve air and water quality and fish and wildlife habitat.

4-03-09 Regulate significant land clearing, grading, and filling to minimize the area, time, and slope length of exposed soils, and to reduce on-site erosion and off-site sediment transport.

Prohibit any significant clearing, grading, or filling operations prior to drainage and erosion/sedimentation plan approval and implementation.

4-03-10 Regulate public and private development proposals in ways to insure that the valuable functions of natural resources are preserved, restored, or improved.

4-03-11 Analyze the chain of environmental impacts from public and private development proposals in context of the whole watershed. Approve, condition, restrict, or deny development proposals based upon accurate and well-documented environmental information.

4-03-12 Manage solid and hazardous wastes in a manner that results in waste reduction, prevents land, air, and water pollution, and conserves natural resources.

4-03-13 Take measures to control noise pollution and reduce noise impacts.

4-03-14 Regulate land uses to conserve all forms of energy.

4-03-15 Encourage and support education and public involvement programs aimed at protecting environmental quality. These programs should: (1) inform, educate, and involve individuals, groups, businesses, industry, and government; (2) increase understanding; and (3) encourage commitment.

4-03-16 Require review and permit approval before construction activity is allowed to occur within, adjacent to, or likely would affect an environmentally critical area.

4-03-17 Undertake all necessary actions to protect the quality of surface water bodies located in the city.

4-03-18 Reduce flooding, erosion, and sedimentation; prevent and mitigate habitat loss; enhance ground water recharge; and prevent water quality degradation. The surface waters of the City of Des Moines should be managed through plans, programs and regulations developed by the City of Des Moines in cooperation with affected jurisdictions.

4-03-19 Manage surface water using a watershed approach, with responsibility shared among the City of Des Moines and affected jurisdictions. Emphasize educational programs and implementation of Best Management Practices to reduce pollution entering surface waters.

4-03-20 Consistent with land use density objectives, strive to maintain the existing diversity of species and habitat in the City and maintain a quality environment that includes fish and wildlife habitats that support the greatest diversity of native species.

4-03-21 Protect and preserve habitat for species that have been identified as endangered, threatened, or sensitive by the state or federal government, or as priority species or priority habitats by the County.

- 4-03-22 Designate and protect fish and wildlife habitat conservation areas including:
- (1) Priority species of local importance and their habitat as listed by the most current King County Comprehensive Plan and/or the Washington Department of Fish and Wildlife;
  - (2) Commercial and recreational shellfish areas;
  - (3) Kelp and eel grass beds;
  - (4) Herring and smelt spawning areas, and
  - (5) Wildlife habitat networks designated by the City of Des Moines.
- 4-03-23 Ensure that stream and wetland buffers be of adequate size to protect critical wildlife species and habitat.
- 4-03-24 Protect salmonid habitat by ensuring that land use and facility plans (transportation, water, sewer, power, gas) include riparian habitat conservation measures. Ensure that development within basins that contain fish enhancement facilities consider impacts to those facilities.
- 4-03-25 Work with adjacent jurisdictions and state federal and tribal governments during land use plan development review to identify and protect habitat networks at jurisdictional boundaries.
- 4-03-26 Be a good steward of public lands and integrate fish and wildlife habitat into capital improvement projects when practicable.

#### 4-04 STRATEGIES

##### 4-04-01 Conservation Planning

- (1) Prepare studies of Des Moines area watersheds, identifying environmental problems and short-term and long-term means for solving the problems.
- (2) Identify and rank capital improvement and land acquisition projects that can prevent flooding, protect surface and ground water quality, stabilize hillsides, and protect, restore, and enhance fish and wildlife habitat.
- (3) Require that development proposals provide measures for restoring or enhancing any lost or degraded functions provided by the environment.
- (4) Grading and construction activities shall implement erosion control Best Management Practices and other development controls as necessary to reduce sediment and pollution discharge from construction sites to minimal levels.

- (5) Regulate and plan land use and condition development proposals in ways that protect mature trees, native vegetation, stream flow, fish and wildlife habitat, groundwater recharge, and air quality, as well as natural topographic, geologic, and hydrologic features.
- (6) Promote public involvement in restoring, protecting, and enhancing natural resources through such programs as Adopt-A-Stream and the Backyard Wildlife Sanctuary Program, by working with local educational institutions, and by integrally involving citizens in developing, implementing, and monitoring environmental programs.
- (7) Maintain and monitor the Shoreline Master Program to control and regulate development in the shoreline area.
- (8) Maintain development regulations and a permitting system to prevent the destruction of critical areas including wetlands, areas with a critical recharging affect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas.
- (9) Designate, map, and protect habitat networks throughout the City of Des Moines from significant adverse environmental impacts.
- (10) In compliance with RCW 36.70A.172, the City should include a record of evidence that it has given "special consideration" to conservation or protection measures necessary to preserve or enhance anadromous fisheries. The record should be developed using the criteria set out in WAC 365-195-900 through 365-195-925 to insure that conservation or protection measures necessary to preserve or enhance anadromous fisheries are grounded in BAS.
- (11) Conservation or protection measures necessary to preserve or enhance anadromous fisheries include measures that protect habitat important for all life stages of anadromous fish, including, but not limited to, spawning and incubation, juvenile rearing and adult residence, juvenile migration downstream to the sea, and adult migration upstream to spawning areas. Special consideration should be given to habitat protection measures based on the best available science relevant to stream flows, water quality and temperature, spawning substrates, instream structural diversity, migratory access, estuary and nearshore marine habitat quality, and the maintenance of salmon prey species. Conservation or protection measures can include the adoption of interim actions and long-term strategies to protect and enhance fisheries resources.
- (12) Encourage the integration of native plant communities and wildlife habitats with other land uses where possible. Encourage or require that development protect wildlife habitat through site design and landscaping. Encourage or require that new development within or adjacent to wildlife habitat networks incorporate design techniques that protect and enhance wildlife habitat values.

- (13) Provide technical assistance, education, and information to citizens and groups wishing to install wildlife enhancement projects. Encourage public demonstration projects that show the range of possibilities for integration of wildlife into a variety of land uses. Consider demonstration projects done jointly by the City and a private landowner or organization.
- (14) To the extent permitted by state and federal law, in order to minimize adverse impacts related to noise, protect fish and wildlife habitat conservation areas from environmental noise levels that exceed 55 Ldn (dBA), or the Ldn in existence on the effective date of this element, whichever is higher. To the extent permitted by state and federal law, a reduction in the exterior noise level shall become the new maximum exterior noise level.

#### 4-04-02 Environmentally Critical Areas

- (1) Identify environmentally critical areas and promulgate performance standards and development regulations for any proposed developments within or adjacent to them.
- (2) Develop and update regulations on development in wetlands and streams, and require an undevelopable buffer of preferably native vegetation adjacent to them that is adequate in size to preserve the natural and beneficial values served by wetlands and streams.
- (3) The City of Des Moines shall evaluate programs and regulations to determine their effectiveness in contributing to ESA listed species conservation and recovery, and shall update and enhance programs and plans where appropriate including evaluation of the Zoning Code, the Critical Areas Ordinance, the Shoreline Master Program, the clearing and grading regulations, the landscaping regulations, best management practices for vegetation management and use of insecticides, herbicides and fungicides. The City of Des Moines shall amend these regulations, plans and best management practices to enhance their effectiveness in protecting and restoring salmonid habitat, taking into consideration the model program developed by the Tri-County Salmon Conservation Coalition and the recommendations of shared strategy.
- (4) Require that development proposals contain measures to stabilize soils, hillsides, bluffs and ravine sidewalls and promote wildlife habitat by retaining critical areas of existing native vegetation.
- (5) Regulate development on bluffs and ravine sidewalls, and require a buffer of undisturbed native vegetation adjacent to them that is adequate in size to insure human safety, health and welfare and to restore and preserve other functions served by bluffs and ravines.

- (6) Restrict development proposals on potentially unstable land, such as areas with erosion, landslide, and seismic hazards, to insure safety and conformity with existing natural constraints.
- (7) Seek public acquisition of environmentally critical areas that have outstanding valuable natural functions and aesthetic assets.
- (8) Administer and enforce adopted land use regulations that protect environmentally critical areas from the impacts of adjacent land uses.
- (9) Require the issuance of a permit and review by the City prior to any construction activity that would occur in, be adjacent to, or would likely affect a critical area. A permit would be required because the functions and values of unique critical areas can be severely damaged by improper refuse dumping, clearing, grading, filling, and construction.
- (10) Using "best available science" (BAS), review and update development regulations pertaining to development in and protection of critical areas (the Critical Areas Ordinance), particularly those which directly or indirectly effect the health of the regions' anadromous fisheries, in the City of Des Moines, between five and ten years of the adopted ordinance date.
- (11) In designating and protecting critical areas the City shall include BAS, consistent with criteria set out in WAC 365-195-900 through 365-195-925.
- (12) BAS is information that (1) state or federal natural resource agencies have determined represents the best available science, (2) was derived from consultation with qualified scientific expert(s), as defined in WAC 365-195-905, or (3) was produced through a valid scientific process. A valid scientific process should have the following characteristics, as defined in WAC 365-195-905: peer review, methods, logical conclusions and reasonable inferences, quantitative analysis, context, and references.
- (13) Where valid or complete scientific information is not available, the City shall take a precautionary or no risk approach, in which development and land use activities are strictly limited until the uncertainty is sufficiently resolved (as stated in WAC 365-195-920). As an interim approach the City should take an effective adaptive management approach, where the results of land use decisions are scientifically evaluated as to their impacts on critical areas.
- (14) Strive to balance the City's goals of protecting environmentally critical areas with the other social, cultural, and economic goals of the City of Des Moines Comprehensive Plan.
- (15) Document, on the record, the use of BAS and instances when non-scientific information was used in-lieu-of BAS during the process of developing policies and regulations to protect critical areas and anadromous fisheries. Documentation



should include the relevant sources of BAS. Documentation should also include information that departs from BAS and was used as a basis for critical areas policies and regulations.

- (16) The City should identify and document any non-scientific information (including legal, social, cultural, economic, and political), used as a basis for critical areas ordinance policies and regulations, that departs from recommendations derived from BAS. In these cases the City should provide a rationale for use of such information. The City should also identify potential risks to the functions and values of the critical areas at issue and any additional measures chosen to limit such risk.

#### 4-04-03 Shoreline Master Program

- (1) The *Des Moines Shoreline Master Program*(SMP) update was provisionally passed by the City Council Resolution No. 1122 on April 8, 2011. As provided by Chapter 18.90 DMMC, the SMP is incorporated as one chapter of the Des Moines Zoning Code (Title 18 DMMC).

#### 4-04-04 Solid and Hazardous Waste Management

- (1) Prepare, implement, and monitor a waste reduction and recycling plan consistent with State of Washington law and the King County Comprehensive Solid Waste Management Plan.
- (2) Prepare, implement, and monitor a hazardous waste management plan consistent with State of Washington law and the Local Hazardous Waste Management Plan for Seattle-King County.

#### 4-04-05 Water Management

- (1) Develop a surface water management program that will:
  - (a) Enhance water quality and control flooding;
  - (b) Effectively use and maintain existing drainage facilities that provide fish and wildlife habitat;
  - (c) Satisfy all regulatory requirements and compliance schedules; and
  - (d) Identify and fund capital improvements.
- (2) Require that development proposals maintain surface water runoff rate, volume, and quality at pre-development levels. Where watershed studies show that the impacts of urbanization are significant, additional measures should be implemented to attenuate drainage problems posed by these impacts.
- (3) Protect and improve surface and ground water quality by requiring development proposals to implement best management practices and other available technology for controlling point and non-point sources of pollution.

- (4) Promote ground water infiltration and minimize surface water runoff by requiring development proposals to limit impervious surfaces.
- (5) Require that development proposals contain measures to control on-site soil erosion and off-site sediment transport during and after construction through the use of best management practices and other available erosion and sedimentation control technology.
- (6) Take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains.
- (7) Work with the Washington State Department of Ecology to implement the programs of the Puget Sound Water Quality Management Plan.
- (8) As authorized by the laws of State of Washington (such as RCW 35.24.280), act to prevent and fine any person or private or public entity causing pollution of surface waters flowing through or into the City of Des Moines from up to five miles from its corporate limits.
- (9) Establish and/or maintain enforcement mechanisms that may be used to prevent or stop contamination to surface water quality.
- (10) If surface water contamination is found in the City of Des Moines, consider requesting state or federal investigations or enforcement actions. Consider pursuing all appropriate civil actions under state and federal law to abate the pollution problem, including a citizen suit under the federal Clean Water Act.
- (11) The City of Des Moines shall maintain a map of Critical Areas.
- (12) Protect the quality and quantity of groundwater by:
  - (a) Assisting during implementation of the South King County Groundwater Management Plan.
  - (b) Implement, as appropriate, Wellhead Protection Programs in conjunction with adjacent jurisdictions and ground water purveyors.
  - (c) Encourage or require use of Best Management Practices for new development recommended by the South King County Groundwater Management Plan.
  - (d) Refine land use and critical areas regulations, as appropriate, to protect critical aquifer recharge areas.

- (13) In order to ensure the quality of surface water and protect the health and welfare of its citizens, the City of Des Moines will:
- (a) Establish a program to monitor surface water quality within its boundaries and encourage neighboring jurisdictions to implement similar monitoring programs.
  - (b) Develop plans, programs and regulations, in cooperation with other jurisdictions, to manage the surface waters of the City.
  - (c) Work with other jurisdictions to develop a watershed approach to surface water management that includes implementation of Best Management Practices and public education initiatives.

4-04-06 Air

- (1) Require that air pollution generated from all land uses be restricted to federal and state ambient air pollution standards. Restrict air pollution generated from solid fuel burning devices and open burning to state emission standards, curtailment rules, and fuel restrictions.
- (2) When other trees are not available or do not provide the needed screening, require that planting and maintenance of trees be an integral part of City street development standards. Require all developments to include landscaping improvements using trees, shrubs, and ground covers. Undertake measures to ensure the survival and good health of trees and plants.

4-04-07 Energy

- (1) Establish construction and site planning standards that result in energy conservation or utilize alternative energy sources.
- (2) Seek to stimulate a land use pattern that encourages an efficient transportation system.
- (3) Implement measures to improve bicycle and pedestrian circulation systems.

This page intentionally left blank.

THIS PAGE LEFT INTENTIONALLY BLANK

# Coppicing Information:

---

A search of the word "coppicing" was conducted on the Washington State, Department of Natural Resources and Ecology websites and revealed the following documents/citations. Based on a brief review of each of these documents, staff has copied all text where the term coppicing was referenced and identified the context under which the term was used.

## Washington State and Ecology websites:

[PDF] WRITTEN FINDINGS OF THE - Washington

[www.nwcb.wa.gov/siteFiles/Lamiastrum\\_galeobdolon.pdf](http://www.nwcb.wa.gov/siteFiles/Lamiastrum_galeobdolon.pdf)

*Lamiastrum galeobdolon* is native to temperate regions of ... The plant grows back heavily and can become dominant after coppicing (cutting 3 back to ...

Coppicing is used in the context of Russian forests and the spread of *L. galeobdolon*:

"In Russian forests, spread of *L. galeobdolon* has been estimated at one m<sup>2</sup> per year (Smirnova and Toropova, 1972, in Packham, 1983), although the spread rate was lower in an English beechwood forest, where the patch radius increased between 50-156 cm per year (Packham, 1983). The plant grows back heavily and can become dominant after coppicing (cutting 3 back to base) (Plants for a Future, 2004). Although Packham (1983) does not consider *L. galeobdolon* as "aggressive" in Great Britain, the author notes that the plant spreads extensively in woodland areas and that a clonal patch can persist for decades if environmental conditions are ideal."

[PDF] G0300216 Salmon Creek Corridor Restoration

... the normal coppicing and regeneration process has been truncated by Reed canary grass. Normally established trees will ...

[PDF] G0500036 Middle Salmon Creek Restoration II

... evolved and been a part of providing excellent riparian habitat the normal coppicing and regeneration process has been truncated by Reed canary grass.

[PDF] G0500035 Lockwood Creek Restoration I

... Lockwood Creek Restoration I (LC 04) Clark Public Utilities G0500035 At total of 1,200 feet of eroding streambank was stabilized exceeding the grant

[XLS] www.ecy.wa.gov

... the normal coppicing and reg

The four reference documents above (Salmon Creek Corridor Restoration, Middle Salmon Creek Restoration II, Lockwood Creek Restoration I and the funding table) use the term coppicing as it relates to beaver predation on riparian plantings (trees):

"...once trees/shrubs are coppiced by beaver will rebound once. The next time they are coppiced the plant is stressed and is out competed by Reed canary grass."

<http://www.ecy.wa.gov/programs/wq/tmdl/SalmonCr/SalmonCrSC03FinalRptV2Cpu0706.pdf>

## Department of Natural Resources website:

### FSC – Forest Management Certification Public Summary Report (2012)

FSC CERTIFICATION SYSTEM Recertification PUBLIC REPORT FOREST MANAGEMENT CERTIFICATION Last report update: 02 December 2013 Washington State Department of Natural Resources  
[http://www.dnr.wa.gov/Publications/frc\\_fsc\\_certificate2012.pdf](http://www.dnr.wa.gov/Publications/frc_fsc_certificate2012.pdf) 1 MB - 12/10/2013

### Forest Stewardship Council (FSC) Certification System Public Summary Report

FSC CERTIFICATION SYSTEM PUBLIC SUMMARY REPORT FOREST MANAGEMENT CERTIFICATION Last update date: 23 th February 2012 Washington State Department of Natural Resources  
[http://www.dnr.wa.gov/Publications/frc\\_fsc\\_certificate.pdf](http://www.dnr.wa.gov/Publications/frc_fsc_certificate.pdf) 1 MB - 3/12/2012

In the above two documents (FSC and Forest Stewardship Council), coppicing is referenced with regard to forest regeneration:

“timber production forest: 64,676 ha (159,820 ac)

- classified as “plantation”: 0 ha
- regenerated primarily by replanting or by a combination of replanting and coppicing of the planted stems: 753 ha (1,861 ac) /year
- regenerated primarily by natural regeneration, or by a combination of natural regeneration and coppicing of the naturally regenerated stems: 0 ha”

### Harvest Impacts on soil carbon storage in temperate forests

Review Harvest impacts on soil carbon storage in temperate forests Lucas E. Nave a b , Eric D. Vance c , Christopher W. Swanston d , Peter S. Curtis a a Ohio State University Department of ...  
[http://www.dnr.wa.gov/Publications/em\\_fp\\_biomass\\_sq7.pdf](http://www.dnr.wa.gov/Publications/em_fp_biomass_sq7.pdf) 1 MB - 12/10/2013

Coppicing is used in a source reference:

*\*Holscher, D., Schade, E., Leuschner, C., 2001. Effects of coppicing in temperate deciduous forests on ecosystem nutrient pools and soil fertility. Basic and Applied Ecology 2, 155–164.*

### Accounting for Carbon in Soils

Accounting for Carbon in Soils Prepared by Alexander Garshenson, Ph.D. James Barsimantov, Ph.D. and EcoShift Consulting, LLC  
[http://www.dnr.wa.gov/Publications/em\\_fp\\_biomass\\_sq13.pdf](http://www.dnr.wa.gov/Publications/em_fp_biomass_sq13.pdf) 1 MB - 12/10/2013  
[View duplicates](#)

Coppicing is referenced as it relates to the effects of carbon uptake in Turkish oak and how harvest methods play a role in soil carbon retention:

*“Hyvönen et al. (2007) report that 1 year after coppicing total photosynthetic uptake of the regrowing shoots of a Turkish oak counterbalances ecosystem respiration (which is dominated by soil respiration and therefore soil carbon losses), while a clear-cut of Scots pine takes 20 years to regain its carbon sink status. This result implies that, depending on tree species, the amount of carbon available for belowground deposition differs drastically, and soil carbon may take a long time to recover from a disturbance depending on the overall ecosystem characteristics. Although results will vary depending on the ecosystem and harvested species, harvest methods appear to play a major role in soil carbon retention. There are some studies from different systems that illustrate the heterogeneity of these overall effects.”*



San Juan County Community Wildfire Protection Plan

This plan was developed by the San Juan County Community Wildfire Protection Plan steering committee. Adopted by the San Juan County Council August 2012 2010 ...

[http://www.dnr.wa.gov/Publications/rp\\_burn\\_cwpp\\_sanjuanco.pdf](http://www.dnr.wa.gov/Publications/rp_burn_cwpp_sanjuanco.pdf) - 443 - 11 13 2012

Coppicing is used in the context of propagating Gorse:

*"Gorse produces deep and extensive roots and huge numbers of brown to black seeds in grey pods. The seeds have a hard, water-resistant coating which allows them to remain dormant in the soil for up to 30 years. In addition to dispersing a large number of seeds, gorse can spread by coppicing from stumps. As with many fire-adapted species, fire helps propagate new gorse seedlings by cracking the impermeable seed coat as well as clearing the heavy litter associated with mature plants. Post fire regeneration of gorse can be prolific and rapid."*

NMFS FP HCP Biological Opinion & Findings

Endangered Species Act Section 7 Consultation Biological Opinion and Section 10 Statement of Findings And Magnuson-Stevens Fishery Conservation and Management Act Essential Fish ...

[http://www.dnr.wa.gov/Publications/fp\\_hcp\\_nmfs\\_bo\\_findings.pdf](http://www.dnr.wa.gov/Publications/fp_hcp_nmfs_bo_findings.pdf) - 13 - 11 13 2012

USFWS FPHCP Biological Opinion Part 1

United States Department of the Interior FISH AND WILDLIFE SERVICE Western Washington Fish and Wildlife Office 510 Desmond Drive SE, Suite 102 Lacey, Washington 98503 Memorandum To: ...

[http://www.dnr.wa.gov/Publications/fp\\_hcp\\_usfws\\_bo\\_pt\\_1.pdf](http://www.dnr.wa.gov/Publications/fp_hcp_usfws_bo_pt_1.pdf) - 12 - 11 13 2012

In the above two documents (NMFS and USFWS) coppicing is used in the context of controlling deciduous tree species as it related to competition with conifer seedlings:

*"Young alder competing with conifer seedlings are often hand-slashed, while big-leaf maple coppicing (production of new shoots from stumps or roots) is usually controlled by fine stem spraying or injection with herbicides. Control of broadleaf plants often involves the use of a variety of chemicals."*

THIS PAGE LEFT INTENTIONALLY BLANK

Examples of Fee's for permits associated with trees and vegetation

	Exempt Tree ①	Tree Permit ⑦	Area			
			0 - 1,999 SF	2,000 - 6,999 SF	7,000 - 1 A.C.	> 1 AC
Non-Critical Area	N/A ②	\$150	N/A ②	\$300	\$1,500	\$1,500 ③
Critical Area (without SEPA)	N/A ②	N/A	\$225	\$525	N/A	N/A
Critical Area (with SEPA) ④	N/A ②	N/A	\$525	\$825	\$2,850	\$2,850 ⑤

NOTES

- ① Dead, Diseased, or Hazard Tree.
- ② No permit required.
- ③ Plus \$114/AC (1-5 acres) and \$83/AC (>5 acres)
- ④ SEPA fee = \$300.
- ⑤ Additional fees may be required if expert reports are required.
- ⑥ Regulations for work within a 200 feet of a shoreline are subject to SMP. SMP reviews range from \$175 - \$5,550
- ⑦ Basic Tree Permit of \$150 is required only for the following circumstances:
  - 1) Removal of significant trees on undeveloped lot.
  - 2) Removal of tree within required landscape areas.
  - 3) Other unique situations.

THIS PAGE LEFT INTENTIONALLY BLANK

# **EXHIBIT 8**

## Chapter 16.25 TREES

### Sections

<u>16.25.010</u>	Title.
<u>16.25.020</u>	Application.
<u>16.25.030</u>	Purpose.
<u>16.25.040</u>	Authority.
<u>16.25.050</u>	Permit – Requirements.
<u>16.25.060</u>	Tree removal, cutting, and pruning limitations.
<u>16.25.070</u>	Best pruning practices.
<u>16.25.080</u>	Tree replacement.
<u>16.25.090</u>	Tree permit – Application.
<u>16.25.100</u>	Permit – Expiration – Extension.
<u>16.25.110</u>	Tree permit to be posted.
<u>16.25.120</u>	Fees.

#### **16.25.010 Title.**

This chapter shall be entitled "Trees." [Ord. 1611 § 1, 2014.]

#### **16.25.020 Application.**

This chapter shall apply to the removal, cutting, and pruning of trees within the City. [Ord. 1611 § 2, 2014.]

#### **16.25.030 Purpose.**

These regulations are adopted to promote the public health, safety and general welfare of the citizens of Des Moines, including minimizing erosion, siltation and water pollution, surface water and ground water runoff, risks of landslides, and the need for additional storm drainage facilities; preserving trees for the reduction of noise, wind protection, slope stabilization, animal habitat, and reduction in air pollution; removing dead, diseased, or hazardous trees; implementing the City's Comprehensive Plan; providing for the delivery of reliable utility service; and reasonable development of property. [Ord. 1611 § 3, 2014.]

#### **16.25.040 Authority.**

This chapter is adopted pursuant to the authority set forth in chapters 36.70A, 36.70B and 36.70C RCW and other applicable laws. [Ord. 1611 § 4, 2014.]

#### **16.25.050 Permit – Requirements.**

(1) No Tree Permit Required. Except as otherwise provided in subsection (2) of this section, no tree permit is required to remove, cut, or prune trees on private developed, partially developed, or undeveloped lots as follows:

- (a) Trees located outside of environmentally critical areas, shoreline areas, and associated buffer areas as verified by the City or qualified professional;

- (b) Trees that are not part of a required landscaping area;
  - (c) The total area to be cleared is less than 2,000 square feet; and
  - (d) An exemption from a tree permit does not exempt a property owner from complying with policies, criteria and standards contained in this chapter or other applicable local, state or federal regulations or permit requirements.
- (2) Tree Permit Required. Except as exempted in subsection (3) of this section, a tree permit is required to remove, cut, or prune trees as follows:
- (a) Trees located within a critical area or shoreline area, or associated buffers.
  - (b) Trees located within a required landscaping area.
  - (c) Trees located on a private developed, partially developed, or undeveloped lot where the total area to be cleared is 2,000 square feet or greater.
  - (d) Trees located on City-owned property.
  - (e) Trees located on City right-of-way.
- (3) Exemptions. The following situations are exempt from obtaining a tree permit that would otherwise be required under this section:
- (a) Dead, diseased or hazard trees, as determined and/or verified by the City or as determined by a certified arborist, that are located outside of critical areas, shoreline areas and associated buffers.
  - (b) Emergency. A tree may be removed without first obtaining a tree permit in an emergency situation involving immediate danger to life or property provided the City is notified within seven days of the tree being cut, is provided such additional information as the City requests in order to verify the emergency, and an after-the-fact tree permit is obtained within 20 days following the cutting of the tree, if required.
  - (c) Exemption from the permit requirements of this chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this Code or any other laws or ordinances of the City.
- (4) Other Permits Required. Other permits may be required as follows:
- (a) Removing, cutting, or pruning of trees located within environmentally critical areas or the associated buffer shall be reviewed in accordance with the environmentally critical areas regulations codified in chapter 16.10 DMMC.
  - (b) Removing, cutting, or pruning of trees located within shoreline environments or the associated buffer shall be reviewed in accordance with the shoreline master program codified in chapter 16.20 DMMC.

- (c) Removing, cutting, or pruning of trees in a required landscaping area is subject to the landscaping and screening provisions codified in chapter 18.195 DMMC, and/or the requirements identified on the final plat.
- (d) Removing, cutting, or pruning of trees located within the City right-of-way shall be reviewed in accordance with the use and maintenance of public rights-of-way provisions codified in chapter 12.05 DMMC.
- (e) Removal, cutting, or pruning of trees that results in a total area of disturbance greater than 2,000 square feet shall be reviewed in accordance with the land clearing, grading, and filling provisions codified in chapter 14.20 DMMC. [Ord. 1611 § 5, 2014.]

#### **16.25.060 Tree removal, cutting, and pruning limitations.**

In addition to the best pruning practices provisions codified in DMMC 16.25.070, the following limitations shall apply to removing, cutting, and pruning of trees:

- (1) Trees on Private Developed, Partially Developed, or Undeveloped Lots. No limitations other than a tree permit is required where the total area to be cleared is 2,000 square feet or greater.
- (2) Trees on City-Owned Property.
  - (a) Removal of dead, diseased or hazard trees as determined and/or verified by the City or as determined by a certified arborist;
  - (b) Removal of small trees;
  - (c) Tree pruning that does not remove more than 25 percent of a tree's total leaf area;
  - (d) Removal of significant trees; provided, that the removal of significant trees is subject to tree replacement ratio of 3:1.
- (3) Trees on City Right-of-Way. Tree pruning does not remove more than 25 percent of a tree's total leaf area. [Ord. 1611 § 6, 2014.]

#### **16.25.070 Best pruning practices.**

Tree pruning shall conform to the International Society of Arboriculture standards, or other standards approved by the Department of Natural Resources (DNR) and/or the Department of Ecology (DOE), to maintain trees within environmentally critical areas and shoreline areas in a healthy and safe condition. [Ord. 1611 § 7, 2014.]

#### **16.25.080 Tree replacement.**

- (1) Replacement Trees – Number. Any tree identified to be retained that is removed, destroyed or damaged shall be replaced by the applicant on the subject property at a ratio of 3:1:
  - (a) Replacement trees shall be a minimum size of eight feet in height for evergreen trees, and two inches in caliper for deciduous, and shall be approved by the Planning, Building and Public Works Department. The Planning, Building and Public Works Department may approve smaller trees if it determines they are of specimen quality.



(b) Trees shall be provided in addition to any street trees required under chapter 12.15 DMMC. The exact type and location of street trees shall be determined by the Planning, Building and Public Works Department.

(2) Maintenance of Replacement Trees. The applicant shall maintain all replacement trees in a healthy condition. The applicant shall be obligated to replant any replacement tree that dies or becomes diseased. [Ord. 1611 § 8, 2014.]

#### **16.25.090 Tree permit – Application.**

An application for a tree permit shall be submitted on a form provided by the City and shall include the following information:

(1) General Information.

- (a) The applicant shall give the name, address and telephone number of the applicant and owner of the property and the street address;
- (b) The applicant must provide information on the proposed location, species, diameter and number of trees proposed to be cut or pruned; and
- (c) The applicant must agree to pay all costs of cutting, pruning, removing debris, cleaning, and any traffic control needed;
- (d) If the applicant is not the owner of the property, a notarized authorization by the property owner consenting to the tree cutting activity shall be provided.

(2) Plan Sheet Specifications. All plan sheets will contain the following information:

- (a) The date, basis, and datum of the contours, which shall be referenced to the City's network of benchmarks, if applicable;
- (b) Date, north arrow, and adequate scale (1:10, 1:20, or 1:40) on all maps and plans;
- (c) Contours will be at two-foot contour intervals;
- (d) Contact information for the applicant and the property owner, and legal description of the property.

(3) Temporary Erosion and Sedimentation Control Plan.

- (a) Sequence for tree removal and other land-disturbing activities;
- (b) Schedule for installation and removal of all temporary erosion and sediment control measures, including vegetative measures; and
- (c) An outline of the methods to be used in clearing vegetation and disposing of the cleared vegetative matter.

(4) The applicant shall have an executed hold harmless and release agreement on a form approved by the City, indemnifying and releasing the City, its officials, officers, and agents from liability.

(5) Other information as deemed necessary by the code official. [Ord. 1611 § 9, 2014.]

#### **16.25.100 Permit – Expiration – Extension.**

(1) Except when specific time limits are set by the City Manager or the City Manager's designee, any permit granted under this chapter shall expire one year from the date of issuance.

(2) The City Manager or the City Manager's designee may set specific limits to the project commencement and/or completion for any reasonable purpose, including but not limited to environmental reasons or for coordination with other permitted site work.

(3) Upon a showing of good cause, a permit may be extended for six months. Approved plans shall not be amended without authorization of the City Manager or the City Manager's designee. [Ord. 1611 § 10, 2014.]

#### **16.25.110 Tree permit to be posted.**

No work shall commence until a permit notice has been posted on the subject site at a conspicuous location. The notice shall remain posted until the project has been completed. [Ord. 1611 § 11, 2014.]

#### **16.25.120 Fees.**

There shall be a fee assessed to compensate the City for the expense of reviewing and processing plans, conducting inspections, providing for outside consulting services, and the like. The fee shall be set by written administrative directive and shall be related to the amount of anticipated service for the particular application. Fees for permits authorized under this chapter that are reviewed after the proposed site work has started will be assessed at twice the normal rate, except for emergency exemption established in DMMC 16.25.050. [Ord. 1611 § 12, 2014.]

**The Des Moines Municipal Code is current through  
Ordinance 1618-A, passed March 12, 2015.**

Disclaimer: The City Clerk's Office has the official version of the Des Moines Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

# **EXHIBIT 9**

# Initiative and Referendum Guide

for Washington Cities  
and Charter Counties



April 2015





Please note, our publications are updated frequently. To ensure you have the most accurate information, download the latest version of this publication from our website:  
[www.mrsc.org/publications/publications.aspx](http://www.mrsc.org/publications/publications.aspx).

**Initiative and Referendum Guide for Washington Cities and Charter Counties**

Copyright © 2015 by MRSC. All rights reserved. Except as permitted under the Copyright Act of 1976, no part of this publication may be reproduced or distributed in any form or by any means or stored in a database or retrieval system without the prior written permission of the publisher; however, governmental entities in the state of Washington are granted permission to reproduce and distribute this publication for official use.

MRSC  
2601 Fourth Avenue, Suite 800  
Seattle, WA 98121-1280  
(206) 625-1300  
(800) 933-6772

[www.MRSC.org](http://www.MRSC.org)

April 2015  
\$30



# Preface

There is increasing interest in the power of the people at both the state and local level to directly exercise authority to enact and repeal laws. This authority is exercised through the powers of initiative and referendum. This publication provides an overview of these powers as they may be exercised at the local level - in the cities and charter counties of the state of Washington.

Most cities and counties in Washington do not have these powers available at this time. Of the 281 incorporated cities in the state, less than 50 have adopted the powers of initiative and referendum. Of the 39 counties in the state, only the six counties that have adopted local charters have available the powers of initiative and referendum. These statistics may, however, be somewhat misleading. The more populated cities and counties have adopted these powers either in their charters or by city council action, so the powers are available to the many Washington citizens at the local level who live in these larger jurisdictions.

This publication provides an overview of the powers of initiative and referendum in local government. It reviews which cities and counties have the powers available and, when legally permitted, how the powers may be adopted in cities and counties that have not already done so. It also reviews in some detail which types of actions are subject to the initiative and referendum process, since there are limitations on the exercise of the power even when it is available.

We hope this publication will be helpful to officials in cities and counties that already have the powers of initiative and referendum, as well as to officials in cities and counties that are considering adopting the powers.

Special acknowledgment is given to Patrick Mason, Senior Legal Consultant, who prepared the original publication and to Bob Meinig, Legal Consultant, who prepared this revision. Thanks is also given to Holly Stewart, Desktop Publishing Specialist, for her excellent work in preparing this guide for publication.





# Contents

## **Initiative and Referendum Powers 1**

## **Arguments for and against 2**

## **Municipalities that have the powers of initiative and referendum available 3**

First class cities 3

Second class cities and towns 3

Commission cities 3

Code cities 3

Commission counties 4

Charter counties 4

## **Types of legislation subject to the initiative and referendum process 5**

Statutory limitations placed on a code city 5

Statutory limitations placed on a commission city 5

Other limitations 6

Administrative/legislative distinction 6

Limitations on initiative and referendum: corporate entity vs. legislative body distinction 7

Legislative body distinction and the growth management act 9

Summary of legislation subject to the process 10

## **How the powers are acquired by a code city 11**

## **How the powers are exercised 13**

Powers exercised in a noncharter code city 13

Powers exercised in a noncharter code city 14

Powers exercised in a commission city 16

Powers exercised in a first class city 17

Powers exercised in a charter county 17

## **How the powers are abandoned 18**

## **Process and requirements for petition signature gatherers 19**

## **Appendix A 20**

Cities and counties that have powers of initiative and referendum 20

## **Appendix B 21**

Sample resolution declaring intent of code city to adopt powers of initiative and referendum 21

## **Appendix C 22**

Sample ordinance of code city adopting powers of initiative and referendum 22

## **Appendix D 23**

Sample initiative petition format for code cities 23

## **Appendix E 24**

Sample referendum petition format for code cities 24

## **Appendix F 25**

Some common questions relating to initiative and referendum powers 25

## **Appendix G 28**

Selected Washington cases that relate to initiative and referendum powers of cities and counties 28

## **Appendix H 32**

Examples of specific statutory grants of power to municipal legislative authority 32

## **Appendix I 34**

Examples of specific statutory grants of power to municipal corporate entity 34

## **Appendix J 36**

Examples of specific statutory grants of power to the county legislative authority 36

## **Appendix K 37**

Rules for petitions in cities 37

## **Appendix L 39**

Special election dates 39

## **Appendix M 40**

Brief review of initiative and referendum powers of first class cities as established in their charters 40

## **Appendix N 43**

Brief review of initiative and referendum powers of charter counties as established in their charters 43

# Initiative and Referendum Powers

Basically, the power of initiative as applied to municipalities refers to the authority of the voters of a city or charter county to directly initiate and enact legislation (hereafter the term “municipality” will include cities, towns, and counties). The process involves an initial petition containing a specified number of signatures that proposes an ordinance for adoption. If the proper form and the number of signatures is sufficient, the issue must either be adopted by the city or charter county council or submitted to the entire electorate of the city or charter county for adoption or rejection at an election.

The power of referendum in a municipality is the right of the people to have an ordi-

nance that has been enacted by the city or charter county council submitted to the voters for their approval or rejection. The process also includes the filing of a petition, with a required minimum number of registered voters, prior to the effective date of the ordinance. If the required number of signatures in the proper form are obtained on the petition, the ordinance is suspended from becoming effective until it has either been repealed by the city or charter county council or is submitted to the voters for approval or rejection at an election.

Briefly, the power of initiative is used to propose new legislation and the power of referendum is used to review previously adopted legislation. These powers exist at the state level also, but this publication deals exclusively with the powers as applied to government at the local level, specifically to cities and charter counties.

# Arguments for and against

The use of initiative is direct democracy at its most fundamental level. It is favored by those who value widespread voter participation both in choosing candidates and in drafting and deciding upon legislation. It is an attempt to enlarge the role of the electorate while at the same time diminishing the power of the elected representatives, in this case the city or charter county councilmembers.

The classic arguments for initiative powers have changed little since the initiative and referendum process was introduced in its present form in this country in the early twentieth century. Proponents argued that the initiative process would neutralize special interest groups, curtail corruption, provide a vehicle for civic education, and put pressure on public officials to act in the public interest. Supporters claimed that the initiative process was the culmination of the steady advance of the broadened franchise and direct democracy in this century.

Those opposed to the use of initiative power are basically supporters of representative democracy. They stress the need for

knowledge and deliberation in the drafting of legislation and the daily business of governing. While those favoring this position are often accused of being undemocratic and lacking faith in the people, they assert that the most important democratic act is the selection of representatives.

Critics of the initiative process argue that it is a dangerous device that undercuts representative government by taking law-making out of the hands of the legislators elected to do the job. Complex issues are reduced to fast “yes” or “no” decisions by voters who may be swayed by misleading television or other commercials paid for by special interest groups. Initiatives may be crudely drafted and no allowance made for the usual give and take of the legislative process, which often results in the kind of compromises that make laws more workable.

Both sides agree that most of the business of governing cannot be decided directly by the people but must be decided by elected representatives. Therefore, the power of initiative is always recognized as a supplement to the normal legislative process.

The same basic philosophical arguments apply to the power of referendum as apply to the initiative power.

# Municipalities that have the powers of initiative and referendum available

The powers of initiative and referendum are not available to all classes of municipalities. These powers are not automatically included in the powers granted to cities, towns, or counties. The authority for use of these powers is found either in the state constitution or in enabling legislation adopted by the state legislature, or both.

In Washington, the only cities that have been granted the powers of initiative and referendum are the first class cities, code cities that have formally adopted these powers, and cities with the commission form of government.

The only counties that may exercise these powers are counties that have formally adopted them by charter. Of the 39 counties in Washington, 33 retain the commission structure as outlined in Title 36 RCW; six counties have established themselves as charter counties by drafting a charter and submitting it to a vote of the people. Counties that have not taken steps to become charter counties are hereafter referred to as “commission counties.”

## First class cities

The state constitution specifically grants the authority to adopt a charter to first class cities, and RCW 35.22.200 specifically provides that a first class city charter may provide for direct legislation by the

people through the initiative and referendum process. All of the ten first class cities in Washington have adopted the powers of initiative and referendum, and the procedures for exercising these powers are set out in the city charter of each city. (A brief review of the procedures exercised in each city is contained in Appendix M.)

## Second class cities and towns

Second class cities and towns do not have the authority to establish initiative and referendum powers; consequently, voters in these two classes of municipalities may not exercise either power. In second class cities and towns, the council may submit an issue to the voters on an advisory ballot basis. This means that the voters may vote on an issue or an ordinance, but the results of the vote are not legally binding. While a city or town council may consider the vote of the people in an advisory ballot in deciding whether to enact or repeal an ordinance, the council is not bound to follow the majority vote.

## Commission cities

A city that has the commission form of government automatically has the powers of initiative and referendum. These powers are set out in the enabling authority for commission cities in RCW 35.17.220 - 35.17.360. Only one city in the state, Shelton, still operates under the commission form, as of February 2014.

## Code cities

While initiative and referendum powers are available to code cities, they are not automatic powers either at the time of incorporation or reclassification as a code city. Code cities must formally adopt these powers. The procedures for adoption are

outlined on pages 11-12 of this publication. As of February 2014, approximately 46 code cities in Washington have formally adopted these powers. (See Appendix A for a list of these code cities.) Citizens in other code cities do not have these powers available. All code cities have authority to submit issues to the public on an advisory basis, but the results of an advisory election are not binding on the city council.

### Commission counties

Commission counties are granted their authority under the state constitution and Title 36 RCW. If a county does not go through the charter process, then it remains a commission form of government. Counties with the commission form of government do not have the powers of initiative and referendum available to them.

### Charter counties

The state constitution grants counties the option of adopting a charter for their own form of government, and that charter may provide for direct legislation by the people through the initiative and referendum process. Seven counties have adopted a charter: Clallam, Clark, King, Pierce, San Juan, Snohomish, and Whatcom. Each has adopted the powers of initiative and referendum. Procedures for the exercise of these powers are set out in the charter of each county. (A brief review of the procedures as exercised in each charter county is contained in Appendix N.)

# Types of legislation subject to the initiative and referendum process

Even if the citizens of a city or county have the powers of initiative and referendum available to them, this does not mean that every type of legislation is subject to these powers. There are a number of statutory limitations on these powers, at least in code cities, and additional limitations have been imposed by the courts. First class city and charter county charters also contain restrictions, and these can differ from city to city and county to county (the specific charter for each jurisdiction must be checked). This section will review the various limitations on the types of legislation which are subject to the initiative and referendum powers.

Only ordinances may be enacted by initiative or repealed by referendum. The powers of initiative and referendum are not applicable to any other type of legislative enactment by a city or county council, such as a motion, order, or resolution.

**Statutory limitations placed on a code city**  
The statutes granting the power of referendum to code cities contain a list of the types of ordinances that are not subject to that power. This means that the 30-day waiting period for ordinances to go into effect, which applies in code cities that have adopted the powers of initiative and referendum, does not apply to these ordinances, since they are not subject to refer-

endum. The list of exempt ordinances contained in RCW 35A.11.090 is as follows:

1. Ordinances initiated by petition;
2. Emergency ordinances necessary for the immediate preservation of public peace, health and safety or for the support of the city government and its existing public institutions which contain a statement of urgency and are passed by unanimous vote of the council;
3. Ordinances providing for local improvement districts;
4. Ordinances appropriating money;
5. Ordinances providing for or approving collective bargaining;
6. Ordinances providing for the compensation of or working conditions of city employees;
7. Ordinances authorizing or repealing the levy of taxes.

These types of ordinances take effect as provided in general law - five days after publication, unless a later date is specified in the ordinance.

## Statutory limitations placed on a commission city

The statutes that grant the power of referendum to commission cities also contain a limitation on the exercise of that power. RCW 35.17.240 indicates that most ordinances adopted in a commission city do not take effect for 30 days after adoption to allow the citizens an opportunity to file



a referendum petition. However, under RCW 35.17.230, the following types of ordinances are not subject to the 30-day waiting period or the referendum process:

1. Ordinances initiated by initiative;
2. Ordinances necessary for the immediate preservation of public peace, health and safety which contain a statement of urgency and are passed by unanimous vote of all the commissioners;
3. Ordinances providing for local improvement districts.

### Other limitations

In addition to the above statutory limitations, the courts in Washington have recognized other limitations on the use of the powers of initiative and referendum. Basically, the courts have recognized two tests to determine if an ordinance is beyond the scope of direct legislation by the people either through the exercise of the initiative power or the referendum power.

The first test is whether the underlying action is legislative or administrative in nature. If the action is administrative, then it is not subject to the power of initiative or referendum. If it is legislative, then it may be subject to initiative and referendum, depending upon the outcome of the second test.

The second test is whether the power is one that has been granted by the legislature to the legislative authority of a city or county or whether it is a power that has been granted to the corporate entity as a whole. If it is a power that has been granted to the legislative authority (city or county council), then it is not subject to

the powers of initiative and referendum. If it is a power that has been granted to the city as a corporate entity, then it may be subject to initiative and referendum.

Both of these powers will be explained in more detail, but it is important to note that the action must pass both tests to be subject to initiative or referendum. If the action is administrative in nature or if the subject of the proposed legislation is a power that has been granted by the state legislature to the city or county council, it is **not** subject to the power of initiative and referendum. Citizens may exercise these powers only if the action is legislative in nature and the subject of the legislation is not one that has been granted to the city or county council.

### Administrative/legislative distinction

The courts in this state have noted that the power of direct legislation by citizens is not an inherent power of the people. The right did not exist until granted by the state constitution in 1912. There is an inherent limitation on this right in that it only extends to matters legislative in character, as compared to administrative matters. Therefore, the scope of the powers of initiative or referendum is restricted to ordinances adopting legislative policy and is not extended to ordinances effecting administrative actions.

This, of course, raises the question of what is an administrative action and what is a legislative action. The courts have applied two tests in making this determination. First, actions relating to subjects of a permanent and general character are usually regarded as legislative matters, and actions taken on subjects of a temporary and special character are usually regarded as administrative matters. Second, the power

to be exercised is legislative in nature if it prescribes a new policy or plan, whereas it is administrative in its nature if it merely pursues a plan already adopted by the legislative body or some power superior to it.

Even with these tests as guides, it may not always be clear whether a matter is legislative, and subject to initiative and referendum, or administrative. One way to help understand this test is to review some court cases in which the courts have characterized various actions as being either legislative or administrative in nature. The following cases provide some guidance:

1. The decision to fluoridate the city water supply is administrative in nature. City of Port Angeles v. Our Water-Our Choice!, 170 Wn.2d 1 (2010).
2. An ordinance amending a comprehensive street name ordinance is administrative in nature since it is enacted pursuant to a plan already adopted by the legislative body. Heider v. Seattle, 100 Wn.2d 874 (1984).
3. The enactment of a business and occupation tax is legislative in nature. Citizens for Financially Responsible Government v. Spokane, 99 Wn.2d 339 (1983).
4. Implementation of a punch card ballot system is legislative in nature. Ballasiotes v. Gardner, 97 Wn.2d 191 (1982).
5. The setting of rates is a legislative act. Earle M. Jorgensen Co. v. Seattle, 99 Wn.2d 861 (1983), and Scott Paper Company v. Anacortes, 90 Wn.2d 19 (1978).
6. A site specific rezone amendment is administrative in nature since it implements the zoning code or comprehensive plan already enacted. Leonard v. Bothell, 87 Wn.2d 847 (1976).
7. The selection of a contractor and the numerous other conditions incident to a building contract are administrative in nature. Ruano v. Spellman, 81 Wn.2d 820 (1973).
8. The granting of an unclassified use permit is administrative. Durocher v. King County, 80 Wn.2d 139 (1972).
9. A decision concerning where to locate a multipurpose stadium is legislative in nature. Paget v. Logan, 78 Wn.2d 349 (1970).

#### Limitations on initiative and referendum: corporate entity vs. legislative body distinction

The other test used by the courts to determine if an issue is subject to initiative or referendum is the distinction between a grant of authority by the state legislature to the city or county as a corporate entity or to its legislative authority (the city or county council). If the statutory grant of authority is to the city or county as a corporate entity, direct legislation by the people is permissible in the form of initiative or referendum. On the other hand, if the grant of power is to the legislative authority of the city or county, then initiative and referendum are prohibited.

When applying this test, it is necessary to determine the statutory grant of authority underlying the action involved. Appendix H contains a list of examples of specific statutory grants of authority to a city council (legislative authority). Presumably, these actions are not subject to initiative and referendum. Appendix I contains a list of examples of specific statutory grants to the city corporate entity. These may be subject to initiative and referendum, although it is necessary to review the other limitations on these powers to make that determination. And finally, Appendix J contains a selected list of specific grants of authority to county legislative authorities.

As an example of how this determination is made, consider the issue of whether citizens may pass an initiative rezoning an area of a city. It is first necessary to determine if there is a specific statutory grant of power to rezone property to either the legislative body or to the city as a whole. There is such a grant of authority for code cities in RCW 35A.63.100 and for other classes of cities in RCW 35.63.080. These statutes provide the legislative body with the authority to divide the city into zones. Therefore, this power is not subject to the power of initiative. This is also the holding of the Washington State Supreme Court, as noted below.

Another example of this determination is the question of whether the initiative process applies to a decision of whether a city should acquire and operate a water utility. Again, the first step is to determine if there is a specific statute that contains a grant of authority to the city as a whole or to the city council to operate a water utility. In this case, there is such a statutory grant in RCW 35.92.010. That statute indicates that a city or town may acquire and oper-

ate a water utility system. Therefore, the grant of authority is not limited to the city council but is a grant to the city as an entity. This issue then, because it is also not an administrative matter, would be subject to the initiative power.

Similarly, this analysis would apply to charter counties as well. An example would be a zoning regulation adopted pursuant to the Planning Enabling Act, chapter 36.70 RCW. Under this statute, the legislature clearly granted the authority to adopt zoning ordinances (“official controls”) and a comprehensive plan to the county legislative authority and not the county as a whole. This effectively invalidates any attempts to use initiative or referendum powers for county comprehensive plans or zoning regulations.

There have been a number of court decisions examining specific issues to determine if the underlying action is subject to initiative and referendum based on this test. A brief summary of the holdings in some of these cases may also help illustrate how this test is applied:

1. In RCW 46.63.170(1), the legislature granted to local legislative bodies the exclusive power to legislate on the subject of the use and operation of automated traffic safety cameras. Therefore, an initiative to expressly restrict the authority of a city’s legislative body to enact red light cameras by requiring a two-thirds vote of the electorate for approval and by limiting the amount of traffic fines is invalid. *Mukilteo Citizens for Simple Gov’t v. City of Mukilteo*, 174 Wn.2d 41 (2012).

2. An initiative that would restrict or limit the authority of a city to issue revenue bonds under chapter 35.41 RCW, the Municipal Revenue Bond Act, exceeds the initiative power and is invalid. The legislature unambiguously granted the legislative body of the city the authority over revenue bonds under multiple provisions in chapter 35.41 RCW. *City of Sequim v. Malkasian*, 157 Wn.2d 251 (2006).
3. The power to amend the county charter was not exclusively delegated to the legislative authority of the county by either article 11 of the state constitution or the King County Charter. Under article 11, amending a county charter is no different than proposing an ordinance. Therefore, an amendment to a county charter may be subject to the powers of initiative and referendum, but repealing a charter is beyond the powers of initiative granted to the people under article 11. *Maleng v. King County Corrections Guild*, 150 Wn.2d 325 (2003).
4. An ordinance adopting a zoning regulation under chapter 36.70 RCW, the Planning Enabling Act, is not subject to the initiative or referendum power because that power has been specifically delegated to the county legislative authority. *Save Our State Park v. County Commissioners*, 74 Wn. App. 637 (1994).
5. An ordinance extending the business and occupation tax is subject to a referendum in a first class city because neither the constitution nor the state legislature restricted that taxing power to the city council. *Citizens for Financially Responsible Government v. Spokane*, 99 Wn.2d 339 (1983).
6. An initiative that amended the city zoning code was invalid because the zoning power has been granted by the state legislature to the city council and not to the city as a corporate entity. *Lince v. Bremerton*, 25 Wn. App. 309 (1980).
7. The legislature granted to the city council the authority to adopt and modify the zoning code. Therefore, a referendum challenging a re-zone was not allowed by the court. *Leonard v. Bothell*, 87 Wn.2d 847 (1976).
8. An ordinance providing for annexation is not subject to a referendum because the powers of annexation have been granted by the legislature to the mayor and city council. *State ex rel. Bowen v. Kruegel*, 67 Wn.2d 673 (1965).
9. An ordinance setting utility rates for a municipal-owned water system, which is being financed by revenue bonds, is not subject to referendum because the authority to set utility rates has been given to the city council when revenue bonds are utilized. *State ex rel. Haas v. Pomeroy*, 50 Wn.2d 23 (1957).

#### Legislative body distinction and the Growth Management Act

The power to enact regulations under the Growth Management Act (GMA), chapter 36.70A RCW, is specifically granted to the

legislative authority of cities and counties. As summarized in the following cases, the courts have addressed the use of initiative and referendum when related to the GMA in a number of cases and have found that the powers are invalid when pertaining to a regulation adopted under the Act:

1. The GMA places considerable power and responsibility in local hands, but it is still a state power that is being exercised to further state mandates. It is for the legislature, not the courts, to amend GMA procedures to provide for local referenda. Until such an amendment is enacted, the court will continue to hold that ordinances such as these that designate and protect critical areas are not subject to local referenda. 1000 Friends of Wash. v. McFarland, 159 Wn.2d 165 (2006).
2. A citizen's initiative to require development restrictions and creek restoration activities was held invalid because development regulations were adopted under the GMA and the authority to adopt them is specifically granted to the city legislative authority. City of Seattle v. Yes for Seattle, 122 Wn. App. 382 (2004), *review denied*, 153 Wn.2d 1020 (2005).
3. A critical areas ordinance adopted under the GMA was not subject to the referendum power of the citizens of Whatcom County even though the power of referendum was granted to the people in the Whatcom County Charter. The power to enact critical areas ordinances under the GMA is specifically granted to the legislative authority of a

city or county. Whatcom County v. Brisbane, 125 Wn.2d 345 (1994).

4. An ordinance that adopted a county-wide planning policy under the requirements of the Growth Management Act was held beyond the power of referendum even though that power was specifically granted to the citizens of Snohomish County in the Snohomish County Charter. The adoption of a county-wide planning policy under the GMA is specifically granted to the legislative authority of a city or county. Snohomish County v. Anderson, 123 Wn.2d 151, and 124 Wn.2d 834 (1994).

As these cases make clear, the powers of initiative and referendum do not apply to ordinances adopted pursuant to the Growth Management Act.

### Summary of legislation subject to the process

A multistep approach is necessary in order to determine if a specific ordinance can be subject to the powers of initiative or referendum. First, it must be determined if the ordinance is an administrative or legislative act of the city or charter county. Second, it must be determined if the underlying issue, which is the subject of the initiative or referendum petition, has been granted by the legislature to the city or charter county as a corporate entity or to the legislative authority of the city or charter county. Finally, for a referendum in a code city, the statutory exceptions from the referendum process in RCW 35A.11.090 must be checked.

# How the powers are acquired by a code city

As previously indicated, not all code cities have the powers of initiative and referendum. These powers must be formally adopted to be available in a code city.

Two methods exist by which a code city may adopt the powers of initiative and referendum:

1. **Petition Method.** The adoption of the powers of initiative and referendum may be initiated by registered voters of the city filing a petition with the city requesting their adoption. To be valid, the petition must contain signatures equal in number to 50 percent of the votes cast at the last general municipal election. The petitions with signatures must then be transmitted by the city to the county auditor for verification of the signatures.

If the petition is found to be sufficient by the county auditor, the city council must adopt a resolution declaring the intention of the city to adopt the powers of initiative and referendum. The city must publish the resolution in a newspaper of general circulation within the city not more than 10 days after passage of the resolution.

If no referendum petition is filed within 90 days after publication of

the resolution, the city council must enact an ordinance formally adopting the powers of initiative and referendum.

If a referendum petition is filed within the 90 days after publication of the resolution that is signed by qualified electors of the city equal to not less than 10 percent of the votes cast at the last general municipal election, an election must be held on the issue of whether to adopt these powers for the city. The vote will be held at the next general municipal election if there is one within 180 days of the filing of the petition. Otherwise, the vote will be at a special election called for that purpose pursuant to RCW 29A.04.330.

2. **Resolution Method.** The second method for acquiring these powers is for a majority of the city council to initiate the process by enacting a resolution declaring the intention to provide for initiative and referendum powers. This resolution must be published in a newspaper of general circulation within the city not more than 10 days after passage of the resolution.

If no referendum petition is filed within 90 days after publication of the resolution, then the city council must enact an ordinance formally adopting the powers of initiative and referendum.

If a referendum petition is filed within the 90 days after publication of the resolution and is signed by qualified electors of the city equal to

not less than 10 percent of the votes cast at the last general municipal election, an election must be held on the issue of whether to adopt these powers for the city. The vote will be held at the next general municipal election if there is one within 180 days or otherwise at a special election called for that purpose pursuant to RCW 29A.04.330.

## How the powers are exercised

**Powers exercised in a noncharter code city**  
As indicated, the power of initiative is only available in those code cities that have formally adopted that power. If a code city adopts this power, it is exercised primarily in the same manner as established for the commission form of government in RCW 35.17.240 - 35.17.360. When the Optional Municipal Code was adopted in 1969, rather than set out a new and different procedure for the initiative and referendum powers, the drafters merely provided that code cities use the same basic procedure that already existed for commission cities. The one exception is in the number of signatures required for a successful petition for code cities, as specified by RCW 35A.11.100.

Only ordinances may be adopted by initiative. It is not possible to adopt resolutions by initiative. Restrictions on the types of ordinances that may be adopted by initiative have been imposed by the legislature and the courts and are reviewed on pages 5-10 of this publication.

Assuming that a code city has formally adopted the power of initiative and that the subject of an ordinance is an appropriate one for an initiative, the initiative process is basically as follows:

1. The proponent of the initiative must obtain signatures on the petition equal in number to 15 percent of the total number of registered voters

within the city as of the date of the last preceding city general election. RCW 35A.11.100.

2. Everyone who signs the initiative petition must add to their signature his or her place of residence, giving the street and the number. Petitions must also be printed in the form required by RCW 35A.01.040. These requirements are outlined in detail in Appendix K.
3. The signed petition must be filed with the officer designated to receive the petition (usually the city clerk), who then has three working days to transmit it to the county auditor who will review and determine the validity and adequacy of the signatures on the petition. After review, the county auditor must attach a certificate to the petition indicating whether or not it has been signed by a sufficient number of registered voters. This written certificate is then transmitted to the city officer with whom the petition was originally filed.
4. If the number of signatures is found to be insufficient, the petitioners have 10 additional days to amend the petition by supplying additional signatures. The amended petition is then resubmitted to the receiving officer who retransmits the petition to the county auditor. If the county auditor finds the number of signatures insufficient a second time, then the petition is returned to the person filing it. Any taxpayer then has the option of filing an action in



superior court to determine if the petition is sufficient.

5. If the county auditor determines that the number of signatures is sufficient, then the city council has two options. The first is for the city council to pass the proposed ordinance, without alteration, within 20 days after the county auditor's certificate of sufficiency has been received by the council. The second is to submit the measure to a vote of the people.
6. The ballot title of any initiative is to be composed of three elements: (a) an identification of the enacting legislative body and a statement of the subject matter; (b) a concise description of the measure; (c) a question asking the voters whether the enactment should be approved or rejected by the voters. The concise statement must be prepared by the city attorney and may not exceed 75 words. RCW 29A.36.071.
7. Once the ballot title is filed, the county auditor will notify the proponents of the initiative of the exact language of the ballot title. If the persons filing the initiative are dissatisfied with the ballot title formulated by the city attorney, they may file an appeal within 10 days to the superior court of the county where the issue is to appear on the ballot. They must indicate their objections and ask for amendment. The court will hold a hearing and render a decision certifying the correct ballot title. The decision of the superior court is final. RCW 29A.36.090.
8. The election will be held by special election not less than 45 days after the certificate of sufficiency is received by the council. The special election dates are listed in RCW 29A.04.330. (See Appendix L.) If a general election is scheduled within 90 days, the election on the initiative will take place on that date instead of on the next special election date (assuming that the general election date is at least 45 days after sufficiency of the petitions is certified).
9. The city clerk must cause the ordinance that will be submitted to the voters at an election to be published at least once in each of the daily newspapers in the city between five and 20 days before the election. If there are no daily newspapers, then publication must be in each of the weekly newspapers.
10. If a majority of the number of votes cast favor the proposed measure, it is adopted and will become effective upon certification of the election results.

An ordinance that has been adopted by means of the initiative process after an election of the people may be repealed or amended only by a vote of the people. This means that the city council may not merely amend or repeal such an ordinance, as is usually the case. However, the city council may initiate the amendment or repeal of the ordinance and then submit the proposition to a vote of the people.

Powers exercised in a noncharter code city  
The objective of the referendum process is to submit an ordinance that has been

formally adopted by the city council to a vote of the people. The process is mainly the same as set out in RCW 35.17.240 - 35.17.360 for the exercise of the referendum power in commission cities.

The referendum power may be exercised only in regard to ordinances. Restrictions as to which types of ordinances are subject to the referendum are reviewed on pages 5-10 of this publication.

An ordinance that is subject to the referendum process does not go into effect for 30 days after enactment so that the citizens will have an opportunity to petition for referendum. (Ordinances that are not subject to referendum are usually effective five days after publication.)

Assuming that a code city has formally adopted the power of referendum and that the ordinance is one of the types that is subject to the referendum power, then the following basic procedures apply to exercise of the referendum power:

1. The proponent of the initiative must submit a petition with attached signatures equal to 15 percent of the number of persons listed as registered voters within the city on the day of the last preceding city general election.
2. Everyone who signs the referendum petition must add to their signature his or her place of residence, giving the street and number. The petitions must also be in the form required by RCW 35A.01.040. These requirements are outlined in detail in Appendix K.
3. The petition must be filed with the officer designated to receive the petition (usually the city clerk). That officer has three working days after the filing of a petition to transmit it to the county auditor, who determines the validity and adequacy of the signatures on the petition. The county auditor must attach a certificate to the petition indicating whether or not it has been signed by a sufficient number of registered voters and transmit the written certificate back to the city officer with whom the petition was originally filed.
4. If the number of signatures is insufficient, then the petitioners have 10 additional days to amend the petition by supplying additional signatures. The amended petition is then resubmitted to the receiving officer who retransmits the petition to the county auditor. If the county auditor finds the number of signatures insufficient a second time, then the petition is returned to the person filing it. Any taxpayer then has the option of filing an action in superior court to determine if the petition is sufficient.
5. If the county auditor determines that the number of signatures is sufficient, then the city council has two options. The first option is to reconsider the ordinance within 20 days and repeal it in its entirety. The second option is to submit the measure for approval or disapproval to a vote of the people.
6. The ballot title of any referendum is to be composed of three elements:

(a) an identification of the enacting legislative body and a statement of the subject matter; (b) a concise description of the measure; (c) a question asking the voters whether the enactment should be approved or rejected by the voters. The concise statement must be prepared by the city attorney and may not exceed 75 words. RCW 29A.36.071.

7. Once the ballot title is filed, the county auditor will notify the persons proposing the referendum of the exact language of the concise statement. If the proponents are not satisfied with the concise statement formulated by the city attorney, they may file an appeal within 10 days to the superior court of the county where the question will appear on the ballot. They must indicate their objections and ask for an amendment. After a hearing, the superior court will certify the final ballot title. The decision of the superior court on the wording is final. RCW 29A.36.090.

8. The election will be at a special election to be held not less than 45 days after the certificate of sufficiency is received by the council. The special election dates are listed in RCW 29A.04.330. (See Appendix L.) If there is a general election being held within 90 days, the election on the referendum will take place on that date instead of on the next special election date (assuming that the general election date is at least 45 days after sufficiency of the petitions is certified).

9. The city clerk must cause the ordinance that will be submitted to the voters to be published at least once in each of the daily newspapers in the city between five and 20 days before the election. If there are no daily newspapers, then publication must be once in each of the weekly newspapers.

10. If a majority of the number of votes cast is in favor of the repeal of the proposed ordinance, then the ordinance is deemed repealed and does not become effective.

If a timely referendum petition is filed, the effective date of the ordinance is suspended until the referendum petition is found to be insufficient or the ordinance is approved by the voters at the election. This means that the ordinance does not take effect until the referendum process is complete, in one way or the other.

**Powers exercised in a commission city**  
Basically, the same procedures apply to the exercise of the powers of initiative and referendum in a commission city as apply in a code city, since the code city drafters utilized the statutory procedures which already existed for initiative and referendum in the commission statutes, RCW 35.17.240 - 35.17.360.

However, there is one significant difference. In a commission city, for an initiative or referendum petition to be sufficient, the petition must be signed by registered voters in the city equal in number to 25 percent of the votes cast for all candidates for mayor at the last preceding city election. This number applies to both initiative and referendum petitions. It is significantly

higher than the signature requirement for code cities.

Other than this difference in the number of signatures for a successful petition, the procedure previously outlined for code cities applies.

#### **Powers exercised in a first class city**

All of the first class cities have adopted the powers of initiative and referendum in their charters. The exact procedure for the exercise of these powers is outlined in each city charter and varies from city to city. See Appendix M for a short summary of initiative and referendum procedures in each of these cities.

#### **Powers exercised in a charter county**

All of the charter counties have adopted the powers of initiative and referendum in their charters. The exact procedure for the exercise of these powers is outlined in each county charter and varies from county to county. See Appendix N for a short summary of initiative and referendum procedures in each of these counties.

## How the powers are abandoned

Code cities, first class cities, and charter counties that have acquired the powers of initiative and referendum may repeal or abandon those powers. It is not possible for a commission city to abandon those powers unless the city changes to another plan of government.

All first class cities and charter counties in Washington have adopted the powers of initiative and referendum in their respective charters. If a first class city or charter county desires to relinquish or abandon its initiative and referendum powers, it must amend its charter. This is accomplished in the same manner as any other charter amendment, which requires a vote of the citizens. No first class city or charter county has ever attempted to repeal charter provisions that contain initiative and referendum powers.

State statutes do provide for the repeal or abandonment of the powers of initiative and referendum in a noncharter code city. However, those powers may not be repealed until at least six years has elapsed since they were adopted. To date, no code city that has acquired initiative and referendum powers has ever repealed them or attempted to do so.

The procedure for a code city desiring to abandon or repeal initiative and referendum powers is the same procedure as is provided for abandonment of a plan of government by a code city. RCW 35A.11.080. A summary of the procedure is as follows:

1. Two ways exist to initiate the repeal of initiative and referendum powers. The first is for the city council to pass a resolution of intention, proposing abandonment of initiative and referendum powers. The second is for the citizens to petition for abandonment of the powers. The petition must be signed by qualified electors equal in number to not less than 10 percent of the votes cast at the last general municipal election.
2. Once the petition has been determined to be sufficient by the county auditor or the resolution of intention has been approved by the council, an election must be held at the next general election in accordance with RCW 29A.04.330.
3. If a majority of the voters voting at the election vote to repeal the powers of initiative and referendum, then they are repealed.

## Process and requirements for petition signature gatherers

The U.S. Supreme Court held unconstitutional a Colorado law that prohibited the payment of individuals who solicit petition signatures because it was a burden on political expression that the state could not justify. *Meyer v. Grant*, 486 U.S. 414 (1988). In response, the Washington State Legislature in 1993 enacted a law that was more limited than Colorado's and that prohibited paying a signature gatherer only on the basis of how many signatures the gatherer obtains. Paying on the basis of how many signatures are obtained may be considered an incentive for fraud in the signature-gathering process.

In 1994, the U.S. District Court for the Western District of Washington found the Washington law to be an unconstitutional restriction on the First Amendment rights of citizens by limiting payment to gatherers on a per signature basis, absent a legislative finding based on "actual evidence" of fraud. *LIMIT v. Maleng*, 874 F.Supp. 1138 (1994).

Although the Washington law (RCW 29A.84.250 and RCW 29A.84.280) has not been repealed, it is no longer enforceable, based on *LIMIT v. Maleng*. (It remains to be seen, however, if the law would be enforceable if a finding based on actual evidence of fraud is made.) In sum, a county or city may not prohibit signature gatherers from being paid, either by a flat rate or per signature gathered.

# Appendix A

## Cities and counties that have powers of initiative and referendum

As of February 2014, the following cities and counties in Washington State possess the powers of initiative and referendum:

### First Class Cities

All ten first class cities have the powers of initiative and referendum.

Aberdeen	Bremerton	Richland	Spokane	Vancouver
Bellingham	Everett	Seattle	Tacoma	Yakima

### Commission Cities

The one commission city has these powers automatically.

Shelton

### Code Cities

The following code cities have adopted the powers of initiative and referendum.

Battle Ground	Clarkston	Kent Lake	Ocean Shores	Shelton
Bellevue	Des Moines	Forest Park	Olympia	Shoreline
Blaine	Edgewood	Longview	Port Angeles	Tukwila
Bonney Lake	Edmonds	Lynnwood	Rainier	Tumwater
Bothell	Ellensburg	Mercer Island	Raymond	Walla Walla
Brier	Federal Way	Mill Creek	Redmond	Wenatchee
Burien	Ferndale	Monroe	Renton	Woodinville
Camas	Goldendale	Mountlake Terrace	Ridgefield	
Chelan	Issaquah	Mukilteo	SeaTac	
Cheney	Kelso	North Bend	Sequim	

### Charter Counties

All six charter counties have adopted the powers of initiative and referendum.

Clallam	Pierce	San Juan	Snohomish	Whatcom
King				

# Appendix B

## Sample resolution declaring intent of code city to adopt powers of initiative and referendum

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF \_\_\_\_\_, WASHINGTON, DECLARING THE INTENT OF THE CITY COUNCIL TO ADOPT THE RIGHT OF INITIATIVE AND REFERENDUM FOR THE REGISTERED VOTERS OF THE CITY; PROVIDING FOR PUBLICATION OF THIS RESOLUTION; AND PROVIDING THAT UPON THE EXPIRATION OF THE NINETIETH DAY AFTER THE DATE OF PUBLICATION THAT AN ORDINANCE ADOPTING THE INITIATIVE AND REFERENDUM PROCESS FOR THE REGISTERED VOTERS OF THE CITY SHALL BE PRESENTED UNLESS A TIMELY AND SUFFICIENT REFERENDUM PETITION HAS BEEN FILED REFERRING THE QUESTION TO THE REGISTERED VOTERS OF THE CITY FOR APPROVAL OR REJECTION.

The CITY COUNCIL OF THE CITY OF \_\_\_\_\_, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. Pursuant to RCW 35A.11.080, which permits the legislative body of a noncharter code city, such as the City of \_\_\_\_\_, to provide for the exercise in the City of the powers of initiative and referendum in accordance with the provisions of state law set forth in RCW 35A.02.020 et seq, the City Council of the City of \_\_\_\_\_, Washington, a noncharter optional municipal code city, hereby declares its intention to adopt for the City the powers of initiative and referendum.

Section 2. Within ten (10) days following the passage of this resolution the City clerk is instructed to cause this resolution to be published at least once in a newspaper of general circulation within the City to wit: (NEWSPAPER TITLE).

Section 3. Notice is given that upon the expiration of the ninetieth day after the date of first publication of this resolution, but excluding the date of first publication of the resolution, if no timely and sufficient referendum petition is filed pursuant to RCW 35A.02.035, as determined by RCW 35A.29.170, the intent expressed in this resolution shall, at the next regular meeting of the City Council, be effected by an ordinance adopting for the City the powers of initiative and referendum.

RESOLVED this \_\_\_\_\_ day of (month/year).

CITY OF \_\_\_\_\_

\_\_\_\_\_  
MAYOR, (name)

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
CITY CLERK, (name)

FILED WITH THE CITY CLERK: (date)

PASSED: (date)

PUBLISHED: Published in the (newspaper) on (date).



# Appendix C

## Sample ordinance of code city adopting powers of initiative and referendum

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF \_\_\_\_\_, WASHINGTON, ADOPTING A POWER OF INITIATIVE AND REFERENDUM FOR THE REGISTERED VOTERS OF THE CITY.

WHEREAS, the City Council of the City of \_\_\_\_\_, Washington, passed Resolution No. \_\_\_\_\_ on (date), stating its intent to adopt the powers of initiative and referendum for the registered voters of the City as provided in RCW Chapter 35A.11, now, therefore,

THE CITY COUNCIL OF THE CITY OF \_\_\_\_\_, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. A new Chapter 1.12 entitled "Initiative and Referendum" is hereby added to the \_\_\_\_\_ Municipal Code to read as follows:

### Section 1.12.010 Power of Initiative and Referendum Adopted

The City of \_\_\_\_\_ hereby adopts the power of initiative and referendum for the registered voters of the city as provided pursuant to RCW 35A.11.080 through 35A.11.100. Such powers are to be exercised as provided in the above referenced sections of the Revised Code of Washington as they now exist or may be amended from time to time and said sections are hereby incorporated in full by this reference.

Section 2. This ordinance will be in full force and effect five days after passage and publication by posting as provided by law.

CITY OF \_\_\_\_\_

\_\_\_\_\_  
MAYOR, (name)

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
CITY CLERK, (name)

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

BY

FILED WITH THE CITY CLERK: (date)  
PASSED BY THE CITY COUNCIL: (date)  
SIGNED BY THE MAYOR: (date)

POSTED: (date)  
EFFECTIVE DATE: (date)

# Appendix D

## Sample initiative petition format for code cities

### WARNING

Every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or she is not a legal voter, or signs a petition when he or she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

### INITIATIVE PETITION FOR SUBMISSION TO THE \_\_\_\_\_ CITY COUNCIL

TO: The City Council of the City of \_\_\_\_\_:

We, the undersigned registered voters of the City of \_\_\_\_\_, State of Washington, residing at the addresses set forth opposite our respective names, being equal to fifteen percent (15%) of the total number of names of persons listed as registered voters within the City on the day of the last preceding City general election, respectfully request that the following ordinance be enacted by the City Council or, if not so enacted, be submitted to a vote of the residents of the City. The title of the said ordinance is as follows:

(Here insert the title, ensuring that the proposed ordinance does not contain more than one subject and that the subject is clearly expressed in the title, and then insert one of the two sentences shown below.)

(The full text of the ordinance is as follows:] or (A full, true and correct copy of the ordinance is attached to this Petition.)

Each of us for himself or herself says:

I have personally signed this petition; I am a registered voter of the City of \_\_\_\_\_, State of Washington; and my residence address is correctly stated.

**Signature Printed Name Street and Number City Date**

1. \_\_\_\_\_

20. \_\_\_\_\_

# Appendix E

## Sample referendum petition format for code cities

### WARNING

Every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or she is not a legal voter, or signs a petition when he or she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

### PETITION FOR REFERENDUM

TO: The City Council of the City of \_\_\_\_\_:

We, the undersigned registered voters of the City of \_\_\_\_\_, State of Washington, residing at the addresses set forth opposite our respective names, being equal to fifteen percent (15%) of the total number of names of persons listed as registered voters within the City on the day of the last preceding City general election, respectfully request that Ordinance No. \_\_\_\_\_ enacted by the City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, be repealed by the Council or, if not so repealed, be referred to a vote of the residents of the City for their approval or rejection. The title of the said ordinance is as follows:

(Here insert the title of the Ordinance as enacted, and then insert one of the two sentences shown below.)

(The full text of the ordinance, as enacted by the City Council, is as follows:) or  
(A full, true and correct copy of the ordinance as enacted by the City Council is attached to this Petition.)

Each of us for himself or herself says:

I have personally signed this petition; I am a registered voter of the City of \_\_\_\_\_, State of Washington; and my residence address is correctly stated.

**Signature Printed Name Street and Number City Date**

1. \_\_\_\_\_

20. \_\_\_\_\_

## Appendix F

Some common questions relating to initiative and referendum powers

1. **What is the power of initiative?**  
The power of initiative is the ability of the voters of the city or charter county to initiate and enact legislation directly, with or without the consent of their elected representatives, the city or county legislative authority.
2. **What is the power of referendum?**  
The power of referendum is the ability of the citizens of the city or charter county to have an ordinance that has been enacted by the city or county legislative authority submitted to the voters for approval or disapproval before it becomes effective.
3. **Have all first class cities adopted the powers of initiative and referendum?**  
Yes. All ten first class cities have adopted these powers in their charters. The exact procedures vary for each city as provided in their charter (See Appendix M).
4. **Do all counties have the powers of initiative and referendum?**  
No. Only the six counties that have adopted a charter have the ability to adopt the powers of initiative and referendum. Each of those counties has adopted the powers of initiative and referendum in their charters. The exact procedures vary for each county as provided in their charters (See Appendix N).
5. **Do all code cities have the powers of initiative and referendum?**  
No. The powers of initiative and referendum are available to all code cities, but they must be specifically adopted. Most of the code cities in the state have not adopted these powers.
6. **Do second class cities or towns have these powers available?**  
No. A statutory grant of authority from the state legislature is necessary for the powers of initiative and referendum to be available. There is no such grant of authority for second class cities or towns to adopt these powers.
7. **May the legislative authority of a city or county that does not have the powers of initiative and referendum available submit an issue to the voters in an advisory ballot?**  
Yes. All cities and counties in the state have the ability to submit an issue to the public on an advisory basis at an election. However, the results of the election are not binding on the city or county legislative authority, as they are for an initiative or referendum; they merely serve to reflect the mood of the electorate.
8. **How may a code city adopt the powers of initiative and referendum?**  
There are two methods by which a code city may adopt these powers. One method is initiated by a resolution of the city council and the other by a voter petition. The exact procedure for each of these methods is outlined in on pages 11-12 of this publication.

9. **How many signatures are required to initiate a referendum or initiative in a code city?**

For an initiative or referendum petition to be valid in a code city, the petition must contain the signatures of registered voters consisting of at least 15 percent of the total number of persons listed as registered voters within the city on the day of the last preceding city general election.

10. **Does the referendum power apply to resolutions of the city or county legislative authority?**

No. The power of referendum only applies to ordinances adopted by the city or county legislative authority. Resolutions are not subject to the referendum power and the initiative process may not be applied to a resolution.

11. **Are all types of ordinances subject to the initiative and referendum process?**

No. There are a number of limitations on the exercise of initiative and referendum powers. Some of these limitations arise out of the state statutes that grant the right of initiative and referendum. Other limitations arise from court decisions concerning the extent of these powers.

12. **What statutory limitations are placed on the right of referendum in code cities?**

RCW 35A.11.090 contains a list of types of ordinances that are not subject to the power of referendum in a code city. This list includes emergency ordinances, ordinances providing for local improvement districts, ordinances appropriating money, ordinances

providing for collective bargaining, ordinances for compensation or other working conditions of city employees, and ordinances authorizing or repealing the levy of taxes.

13. **What other limitations are placed on the exercise of the powers of initiative and referendum?**

The courts in Washington have imposed two tests to determine if a specific ordinance is subject to the powers of initiative and referendum. The first test is whether the underlying action is administrative or legislative. Only legislative actions are subject to initiative and referendum; administrative actions are not. The second test is to determine if the power is one that has been granted to the legislative authority of the city or county or whether it is a power that has been granted to the corporate entity as a whole. If it is a power that has been granted to the legislative authority or city council specifically, then it is not subject to initiative and referendum.

14. **What is an administrative action and what is a legislative action for purposes of determining if an action is subject to initiative and referendum?**

The courts have established two tests to determine this. Actions relating to subjects of a permanent and general character are usually regarded as legislative in nature, and actions relating to subjects of a temporary and special character are usually regarded as administrative in nature. Secondly, the power to be exercised is legislative in nature if it prescribes a new policy or plan, while it is administrative in nature if it merely pursues a policy or plan already adopted by the city or county council.

15. **Is a rezone ordinance subject to the referendum process in a code city?**  
No. This specific issue was the subject of a court case, *Leornard v. Bothell*, 87 Wn.2d 847 (1976). Although the court considered a site-specific rezone to be an administrative action, it held that the authority to adopt and modify the zoning code in a code city had been given by the state legislature to the city council, and so a site-specific rezone is not subject to the power of referendum.
16. **Is the power to annex property subject to the initiative or referendum process?**  
No. The power to annex property has been granted by the state legislature specifically to the city council and so it is not subject to the initiative process. This is the holding in *State ex rel. Bowen v. Kruegel*, 67 Wn.2d 673 (1965).
17. **May the powers of initiative and referendum be abandoned once they have been adopted?**  
Yes, first class cities, code cities, and charter counties may abandon these powers after they have been adopted. First class cities and charter counties must amend their charters to abandon these powers. A code city may abandon these powers so long as at least six years have elapsed since their adoption. The process is described on page 18 of this publication. Only commission cities have no authority to abandon these powers since they are a part of the commission form of government and are contained in the state enabling legislation for that form of government.
18. **Can petition signature gatherers be paid?**  
Yes, petition signature gatherers can be paid either a flat fee or on a per signature gathered basis. Cities and counties do not have the authority to ban signature gatherers from being paid on either basis.
19. **Are ordinances enacted pursuant to the Growth Management Act (GMA) subject to the power of referendum?**  
No. Any ordinance adopted pursuant to the GMA is not subject to the power of referendum, because the legislature specifically delegated the power to act under GMA to the legislative authority of a city or county and not to the corporate entity.
20. **Can ordinances that pertain to the Growth Management Act be enacted by initiative?**  
No. Any ordinance related to the GMA is not subject to the powers of initiative as well, because the legislature specifically delegated the power to act under GMA to the legislative authority of a city or county and not to the corporate entity.

## Appendix G

Selected Washington cases that relate to initiative and referendum powers of cities and counties

Most of the case law authority in Washington regarding initiative and referendum powers relate to whether a particular issue is subject to those powers or not. The following are some of the leading cases on this issue:

**Mukilteo Citizens for Simple Gov't v. City of Mukilteo, 174 Wn.2d 41 (2012)**

The legislature granted to local legislative bodies the exclusive power to legislate on the subject of the use and operation of automated traffic safety cameras. Therefore, an initiative to expressly restrict the authority of a city's legislative body to enact red light cameras by requiring a two-thirds vote of the electorate for approval and by limiting the amount of traffic fines is invalid.

**City of Port Angeles v. Our Water-Our Choice!, 170 Wn.2d 1 (2010)**

The decision to fluoridate the city water supply is administrative in nature, and so is beyond the scope of the local initiative power and is subject to preelection challenge.

**1000 Friends of Wash. v. McFarland, 159 Wn.2d 165 (2006)**

Ordinances enacted under the GMA that designate and protect critical areas are not subject to local referenda.

**City of Sequim v. Malkasian, 157 Wn.2d 251 (2006)**

An initiative that would restrict or limit the authority of a city to issue revenue bonds under chapter 35.41 RCW, the Municipal Revenue Bond Act, exceeds the initiative power and is invalid. The legislature unambiguously granted the legislative body of the city the authority over revenue bonds under multiple provisions in chapter 35.41 RCW.

**City of Seattle v. Yes for Seattle, 122 Wn. App. 382 (2004), review denied, 153 Wn.2d 1020 (2005)**

A local initiative that related to development restrictions over creeks or their buffers and required certain creek restoration activities was invalid because the initiative concerned a development regulation under the Growth Management Act and the statutory grant of power to enact such regulations is to the legislative authority of the city.

**King County v. Taxpayers of King County, 133 Wn.2d 584 (1997)**

An ordinance authorizing the issuance of bonds to build a new baseball stadium as permitted under the Stadium Act (RCW 82.14.0485) was not subject to initiative.

**Bidwell v. Bellevue, 65 Wn. App. 43, review denied, 119 Wn.2d 1023 (1992)**

An initiative that restricted the authority of the Bellevue Convention Center Authority to issue negotiable bonds or notes to finance construction of the convention center without prior voter approval was not appropriate because the initiative dealt with administrative matters and would

have unconstitutionally impaired contract rights.

**Heider v. Seattle, 100 Wn.2d 874 (1984)**

Changing the name of a street is an administrative action not subject to the initiative process.

**Citizens for Financially Responsible Government v. Spokane, 99 Wn.2d 339 (1983)**

The enactment by a first class city of a business and occupation tax is subject to referendum because it is legislative in nature and the power to enact such taxes is shared with the electorate because of provisions in the Spokane city charter.

**Seattle Building and Construction Trades Council v. Seattle, 94 Wn.2d 740 (1980)**

A proposed initiative that would have prohibited further work on the I-90 construction project across Lake Washington was held invalid because the actions of the city were administrative in nature and not subject to the initiative process.

**Lince v. Bremerton, 25 Wn. App. 309 (1980)**

An initiative is not an appropriate measure to amend the zoning code of a first class city because that is a power that has been given to the legislative body of the city.

**Leornard v. Bothell, 87 Wn.2d 847 (1976)**

A site-specific rezone ordinance is not subject to the referendum power because it is administrative in nature and also because the power to amend the zoning code has been granted to the legislative body of the city.

**Ruano v. Spellman, 81 Wn.2d 820 (1973)**

An attempt to prevent construction of the Kingdome by repealing the resolution authorizing the project and the bonds to finance it and to prohibit spending of funds for further development was improper because the decisions remaining were held to be administrative in nature and the passage of the initiative would also result in the impairment of existing contract rights.

**State ex rel. Guthrie v. Richland, 80 Wn.2d 382 (1972)**

Initiative and referendum powers can only be invoked at the local level if their exercise is not in conflict with state law. In this case, an ordinance providing for extensions to the municipally-owned waterworks, financed by revenue bonds, was held not subject to a referendum.

**Durocher v. King County, 80 Wn.2d 139 (1972)**

Action by the county in granting an "unclassified use permit" was not subject to referendum because it is administrative in nature.

**Ford v. Logan, 79 Wn.2d 147 (1971)**

The repeal of a county home rule charter is not within the initiative powers granted to the voters of a county.

**Paget v. Logan, 78 Wn.2d 349 (1970)**

An initiative that prohibited location of a multipurpose stadium at the Seattle Center was held to be appropriate because the issue was legislative and the power was one that had been granted to the county as a corporate entity.

**State ex rel. Bowen v. Kruegel, 67 Wn.2d 673 (1965)**



An annexation ordinance is not subject to referendum power because the authority to annex property has been given to the city council.

**State ex rel. Haas v. Pomeroy, 50 Wn.2d 23 (1957)**

The action of a city council in setting water utility rates, where the system is financed by revenue bonds, is not subject to referendum because the grant of power to set rates when revenue bonds have been used to create the utility is to the city council.

Cases that relate to other aspects of the local initiative and referendum process:

**Eyman v. McGehee, 174 Wn. App. 684 (2013)**

The city clerk had a mandatory duty under RCW 35A.01.040(4) and RCW 35A.29.170 to transfer to the county auditor the initiative petition to prohibit the city's using automatic ticketing cameras, but the issuance of writ of mandamus the issuance of a writ would have been improper as a vain and useless act, because the initiative exceeded the local initiative power.

**City of Sequim v. Malkasian, 157 Wn.2d 251 (2006)**

The city had standing to bring a postelection challenge to an initiative approved by the voters. The question of whether the initiative was beyond the scope of the initiative power was not mooted by the election because the election did not alter or expand the scope of the initiative power. The sponsor of a local initiative can be the proper defendant in a preelection declaratory action to determine whether the initiative exceeds the initiative power of the people.

**Maleng v. King County Corrections Guild, 150 Wn.2d 325 (2003)**

A county initiative changing the number of councilmembers was valid. The state supreme court held that the initiative was not beyond the initiative powers under the state constitution or the King County Charter because amending a charter is no different than proposing an ordinance.

**Priorities First v. City of Spokane, 93 Wn. App. 406 (1998), review denied, 137 Wn.2d 1035 (1999)**

An action against the city for refusing to put an initiative on the ballot that sought voter approval before it created a public development authority (PDA) to provide off-street parking facilities was invalid. The court of appeals ruled that the city was correct in declaring the initiative invalid because it conflicted with a state statute (chapter 35.41 RCW) in which the legislature has delegated authority to the city council.

**CLEAN v. City of Spokane, 133 Wn.2d 455 (1997)**

A referendum challenging an ordinance to support an off-street parking garage for a private retail development under the emergency clause of the Spokane City Charter was invalid. The court ruled that the city had an interest in preventing economic loss to the downtown area.

**Whatcom County v. Brisbane, 125 Wn.2d 345 (1994)**

A critical areas ordinance enacted under the Growth Management Act was not subject to the referendum power. The court stated that where a statutory grant of authority is given to the legislative body of a city or county then that grant of authority supersedes the county or city charter.

**Snohomish County v. Anderson, 123 Wn.2d 151 (1994), also 124 Wn.2d 834 (1994)**

A citizen's referendum to the county council adopting a county-wide planning policy ordinance as required under the Growth Management Act (GMA) was invalid. The court ruled that the GMA requires the legislative authority of counties to adopt a county-wide planning policy and a referendum regarding that policy is beyond the referendum power of the citizens.

**Save Our State Park v. County Commissioners, 74 Wn. App. 637 (1994)**

An initiative to repeal a zoning regulation adopted by the county commissioners pursuant to the Planning Enabling Act, chapter 36.70 RCW, was invalid. The court of appeals ruled that the legislature has clearly delegated the authority to approve a comprehensive plan, adopt official controls, and engage in zoning under chapter 36.70 RCW to the county legislative authority.

**LIMIT v. Maleng, 874 F.Supp. 1138 (1994)**

The U.S. District Court found that, based on the U.S. Supreme Court's interpretation, the Washington law that made it a gross misdemeanor to pay signature gatherers per signature was an unconstitutional prohibition on freedom of political speech guaranteed by the First Amendment.

**State ex rel. Uhlman v. Melton, 66 Wn.2d 157 (1965)**

Petitions for referendums in municipalities must strictly comply with procedural requirements, such as the time for filing petitions, since these requirements are mandatory and jurisdictional.

**State ex. rel. O'Connell v. Meyers, 51 Wn.2d 454 (1957)**

The presumption in favor of constitutionality of legislation also applies to statutes enacted by initiative.

## Appendix H

### Examples of specific statutory grants of power to municipal legislative authority

These topics are not likely to be subject to initiative and referendum powers.

<b>Statutory Grants</b>	<b>RCW</b>
Consolidation/Annexation of One City to Another	Ch.35.10
Annexation of Unincorporated Areas to City	Ch.35.13
Assumption of Water-Sewer Districts	35.13A.020
Power to Acquire Auditoriums, Art Museums, Swimming Pools, etc.	35.21.020
Power to Create Special Funds: Payroll & Claims	35.21.085
Authority to Designate Streets as Parkways Transfer of Maintenance Responsibilities	35.21.190
Power to Establish Residency Qualifications for Appointed Officials/ Preference in Employment	35.21.200
Power to Purchase Liability and Workman's Compensation Insurance	35.21.209
Power to Establish Transportation Benefit Districts	35.21.225
Power to Participate in Economic Opportunity Act Programs	35.21.680
Authority to Promote Tourism	35.21.700
Authority to Establish Public Ambulance Utility	35.21.766
Authority to Establish B & O Tax on Ambulance Businesses	35.21.768
Authority to Revise Corporate Boundary Street Center Lines	35.21.790
Authority to Create Park Board Commissioners	35.23.170
Authority to Create Special Funds, Sell Revenue Bonds, Warrants & Set Rates Municipal Bond Revenue Act	Ch.35.41
Authority to Order Local Improvements	35.43.040
Authority to Create Utility Local Improvement Districts (ULID)	35.43.042
Authority to Issue LID Bonds	35.45.010
Authority to Create Pedestrian Malls	35.71.030
Authority to Contract for Street Projects	35.72.010
Authority to Create Comprehensive (6-year) Street Plan	35.77.010
Authority to Classify Streets	35.78.010
Authority to Vacate Streets	35.79.030
Authority to Regulate Unfit Dwellings, Buildings, Structures	35.80.030
Authority to Enable Local Housing Authority	35.82.030

**Statutory Grants****RCW**

Authority to Acquire, Construct, Maintain, etc., Out-of-State Property, Plant and Equipment for Municipal Utilities	35.92.014
Authority to Appropriate Funds, Levy Tax for Transportation System	35.95.030
Authority to Annex Property Code Cities	35A.14.015
Authority to Establish a Planning Agency	35A.63.020
Authority to Approve Comprehensive Plan	35A.63.072
	35.63.100
Authority to Adopt Land Use Regulations (Zoning Code)	35A.63.100
	35.63.110
Authority to Establish Short Plat/Subdivision Regulations	58.17.060
Authority to Approve Plats	58.17.100
	58.17.110
	58.17.170

# Appendix I

## Examples of specific statutory grants of power to municipal corporate entity

These topics may be subject to initiative and referendum powers if the other statutory and judicial limitations on the powers are satisfied.

<b>Statutory Grants</b>	<b>RCW</b>
Petition for Reduction of City Limits	35.16.010
Power to Provide Auxiliary Water System for Fire Protection	35.21.030
Power to Create Equipment Fund	35.21.088
Power to Establish, Construct and Maintain Dikes and Levees	35.21.090
Power to Accept Donations of Property	35.21.100
Authorization to Construct, Acquire and Maintain Ferries	35.21.110
Power to Establish Solid Waste Handling System	35.21.120
Power to Establish Sewers, Drainage and Water Supplies	35.21.210
Power to Regulate Sidewalks	35.21.220
Authority to Require Removal of Debris/Plants	35.21.310
Authority to Establish Lake Management Districts	35.21.403
Authority to Establish Youth Agencies	35.21.630
Authority to Assist Development of Low Income Housing	35.21.685
Authority to Own/Operate Professional Sports Franchise	35.21.695
Authority to Acquire/Construct Multi-Purpose Community Center	35.59.030
Authority to Participate in World Fairs and Expositions	35.60.030
Authority to Construct Sidewalks, Gutters, Curbs, etc.	35.68.010
Authority to Erect/Maintain Draw Bridges	
Authority to Regulate and License Bicycles	35.75.010
Authority to Provide Off-Street Parking Facilities	35.86.010
Authority to Acquire and Operate Municipal Utilities Generally	35.92.010
Authority to Require Conversion to Underground Utilities	35.96.030
Authority to Establish Heating Systems	35.97.020
Power to Adopt Code City Status	35A.02.010
Power to Adopt Charter Code City Status	35A.07.010
Authority for Library, Museum and Historical Activities	35A.27.010
Authority for Joint Acquisition of Land for Schools	35A.28.010
Authority for Joint Facilities and Agreements Intergovernmental Relations Civic Center, Jails, Armories	35A.35.010

**Statutory Grants****RCW**

Authority for Emergency Services Participation	35A.38.010
Authority for Granting of Property for Highways and Streets	35A.47.010
Authority for Local Regulatory Option on Sale of Liquor	Ch.35A.66
Authority to Acquire Recreational Facilities	Ch.35A.67
Authority to Acquire Cemeteries/Morgues	Ch.35A.68
Authority to Regulate Food and Drugs	Ch.35A.69
Authority to Regulate Health and Safety	Ch.35A.70
Authority to Provide for the General Welfare	Ch.35A.74
Power to Acquire, Use and Manage Property and Materials	Ch.35A.79
Authority to Provide Public Utilities	Ch.35A.80
Authority to Regulate Harbors and Navigation	Ch.35A.88

## Appendix J

### Examples of specific statutory grants of power to the county legislative authority

Under RCW 36.32.120, the legislature has granted specific powers to the legislative authority of counties. Specifically those powers are:

1. The erection and repairing of public buildings for use by the county.
2. Laying out, discontinuing, or altering county roads or highways within the county.
3. License and fix rates of ferriage.
4. Fix the amount of taxes to be assessed.
5. Allow all accounts legally chargeable and audit, manage, collect and disburse any money belonging to the county or appropriated to its benefit.
6. Care of the county property and management of the county funds and business as well as prosecute and defend all actions for and against the county.
7. Make and enforce all such police and sanitary regulations as are not in conflict with state law and may adopt building codes for unincorporated areas.
8. The power to compound or release in whole or part any debt due the county.
9. Administer oaths or affirmations necessary to discharge their duties and commit for contempt any witness refusing to testify.
10. The power to declare what shall be deemed a nuisance within the county.

# Appendix K

## Rules for petitions in cities

Specific statutory rules apply to petitions in cities, including referendum and initiative petitions. RCW 35.21.005, 35A.01.040. The most important of these rules relating to petitions signed by voters are as follows:

1. The petition may include any page or group of pages which contain an identical text intended by the circulators to be considered as one petition. The following are essential elements of the petition:
  - a. The text of the petition must be a concise statement of the action or relief desired by the petitioners;
  - b. All initiative and referendum petitions must contain an attached copy of the full ordinance;
  - c. The petition must contain numbered lines for signatures with space provided beside each signature for the date of signing and the address of the signer;
  - d. The warning statement that is outlined below must be contained on each page of the petition having a space for signatures;
  - e. Any petition that seeks the annexation, incorporation, withdrawal or reduction of city limits must contain an accurate legal description of the

area proposed for such action and a map if practical.

2. The petitions must be printed or typed on single sheets of white paper of good quality. Each sheet of petition paper that has a space of signatures must contain the text of the petition and the following warning language:

### WARNING

Every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or she is not a legal voter, or signs a petition when he or she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

Each signature must be signed in ink or indelible pencil and must be followed by the date of signing and the address of the signer.

3. In code cities, the petition must contain the valid signatures of 15 percent of the total number of names of persons listed as registered voters within the city on the day of the last preceding city general election. RCW 35A.11.100.
4. The signatures do not have to all be attached to one sheet of paper.
5. Petitions that contain the required number of signatures are to be ac-



- cepted as valid until their invalidity has been proved.
6. A variation between the signature on the petition and that on the voter's permanent registration which is caused by use of initials instead of the first or middle names, or both, does not invalidate the signature on the petition if the last name and handwriting are the same.
  7. Signatures that are followed by a date of signing that is more than six months prior to the date of filing the petition are also to be stricken. This means, in effect, that signatures are valid only for six months after the date of signing.
  8. Within three working days after the filing of the petition with the city, the officer with whom the petition is filed shall transmit the petition to the county auditor, who must proceed with the determination of whether the signatures are sufficient. The office of the county auditor must notify the officer who received the petition of the date on which this determination was begun, and this date is to be known as the terminal date.
  9. Any signer of a filed petition may withdraw his or her signature by filing a written request for withdrawal with the receiving officer prior to the terminal date. The name of the person seeking to withdraw must be signed exactly as the signature on the initial petition. After the filing of the request for withdrawal, the signature of the person seeking to withdraw is to be considered withdrawn.
  10. Additional pages of one or more signatures may be added to the petition by filing with the receiving officer such pages prior to the terminal date.
  11. The officer responsible for determining the sufficiency of the petition shall do so in writing and transmit the written certificate to the officer with whom the petition was originally filed.

# Appendix L

## Special election dates

Initiative and referendum elections may be held only on specific dates. These dates are set out in RCW 29A.04.330 and apply to all classes of cities and to all counties. The following are the dates on which an initiative or referendum election may be held:

1. The second Tuesday in February;
2. The fourth Tuesday in April;
3. The third Tuesday in May;
4. The day of the primary election as specified by RCW 29A.04.311;
5. The first Tuesday after the first Monday in November (this is the same date as the general election date in November).

If a sufficient initiative and referendum petition is filed, the election on the ordinance must be held on one of the above listed dates.

## Appendix M

Brief review of initiative and referendum powers of first class cities as established in their charters

The following is a brief synopsis of the initiative and referendum powers of each of the first class cities. However, for complete details of the procedures and limitations on these powers, the specific charters of each of the cities must be carefully reviewed.

### Aberdeen

*Initiative* – An ordinance may be initiated by a petition of 25 percent of the qualified registered voters of the city voting at the last preceding general municipal election. The proposed ordinance and initiative must be filed with the finance director at least 60 days before the next municipal general election. If the signatures are sufficient, the measure must be placed on the ballot at the next general municipal election.

*Referendum* – The citizens have 45 days after the final publication of an ordinance to circulate a petition and obtain the signatures of registered voters equal to at least 25 percent of the total number of persons voting at the last preceding regular municipal election. The election may be at a special election or a general municipal election. If the ordinance is repealed, the council may not reenact it for at least one year.

### Bellingham

*Initiative* – An ordinance may be initiated on petition of a number of qualified vot-

ers equal to not less than 20 percent of the total number of votes cast for the office of mayor at the last preceding municipal general election. The initiative petition is to be filed with the finance director. The election will be at the next municipal general election, although the council may provide for a special election on the initiative.

*Referendum* – An ordinance may be referred to a referendum election if a petition is filed signed by qualified voters equal in number to not less than 8 percent of the total number of votes cast for the office of mayor at the last preceding municipal general election. The petition must be filed with the finance director at least 30 days following the effective date of such ordinance. Any ordinance initiated or referred and approved at an election may not be amended or repealed within two years after the effective date.

### Bremerton

*Initiative* – An ordinance may be initiated on petition signed by registered voters equal in number to at least 20 percent of the votes cast at the last municipal general election for all candidates for the office of mayor. The initiative must be filed with the city clerk. The election may be at a special election. No ordinance initiated by this process and voted on favorably by the people may be amended or repealed by the city council unless submitted to the citizens for a vote.

*Referendum* – An ordinance may be referred to a referendum election if a petition is filed before the effective date of the ordinance signed by qualified electors of the city equal in number to not less than 25 percent of the votes cast at the last municipal general election for all candidates

for the office of mayor. The petition must be filed with the city clerk and the election may be at a special or general election.

### **Everett**

*Initiative* – An ordinance may be initiated by a petition signed by qualified electors equal in number to at least 15 percent of the total number of votes cast at the last preceding municipal general election. The petition must be filed with the clerk and the election may be at a special or general election. No ordinance passed by this process may be amended or repealed except by popular vote of the people.

*Referendum* – An ordinance may be referred to a referendum election if a petition is filed before the effective date signed by qualified electors equal in number to 10 percent of the entire vote cast at the last preceding general municipal election. It must be filed with the clerk and the election may be at a general or special election.

### **Richland**

*Initiative* – An ordinance may be initiated by a petition signed by a number of registered voters equal to at least 20 percent of the total vote cast at the last preceding regular general election. The petition must be filed with the city clerk and the election may be at a special or general election. An initiative ordinance may not be amended or repealed within one year of its enactment.

*Referendum* – An ordinance may be referred to a referendum election if a petition is filed within 30 days of first publication of the ordinance. The petition must be signed by a number of registered electors equal to at least 25 percent of the total votes cast at the last preceding regular general election. The petition must be filed

with the clerk and the election may be at a general or special election. No ordinance repealed by such an election may be reenacted by the council within one year of the effective date of the repeal.

### **Seattle**

*Initiative* – An ordinance may be initiated by a petition signed by a number of registered voters equal to not less than 10 percent of the total number of votes cast for the office of mayor at the last preceding municipal election. The petition must be filed with the city comptroller. The election may be at a special or general election.

*Referendum* – An ordinance may be referred to a referendum election if a petition is filed signed by a number of registered voters equal to not less than 8 percent of the total number of votes cast for the office of mayor at the last preceding municipal election. The petition must be filed with the city comptroller and the election may be at a special or general election. No ordinance so initiated or referred and approved by the voters may be amended or repealed by the council for at least a two-year period.

### **Spokane**

*Initiative* – An ordinance may be initiated by a petition signed by registered and qualified electors equal in number to at least 15 percent of the total number of votes cast at the last preceding general municipal election. The petition must be filed with the clerk and submitted at the next available special or general election. No ordinance adopted by this process may be amended by the council within three years without a vote of the people. After three years, the council may amend or repeal the ordinance if passed by vote of a majority

plus one and the ordinance is subject to referendum.

*Referendum* – An ordinance may be referred to a referendum election if prior to its effective date a petition is filed signed by qualified electors equal in number to at least 10 percent of the total number of votes cast at the last preceding general municipal election. The petition must be filed with the clerk and voted upon at a general or special election.

### **Tacoma**

*Initiative* – An ordinance may be initiated by a petition signed by registered voters equal in number to at least 10 percent of the total votes cast at the last preceding council-manic election. The petition must be filed with the city clerk and submitted to a vote at the next general municipal election or at a special election. No ordinance enacted in this manner may be amended or repealed by the council within two years unless the amendment or repeal is submitted to a vote of the people.

*Referendum* – An ordinance may be referred to a referendum election if prior to its effective date a petition is filed signed by qualified electors equal in number to at least 10 percent of the total vote cast in the last preceding council-manic election. The petition must be filed with the city clerk and submitted to a vote at the next general municipal election or at a special election.

### **Vancouver**

*Initiative* – An ordinance may be initiated by a petition signed by registered voters equal in number to at least 15 percent of the number of votes cast at the last preceding municipal general election. The petition must be filed with the city clerk and submitted at a general or special election.

No ordinance enacted by this process may be amended or repealed within one year by the city council.

*Referendum* – An ordinance may be referred to a referendum election if within 30 days after enactment a petition is filed signed by registered voters of the city equal in number to at least 10 percent of the number of votes cast at the last preceding municipal general election. The petition must be filed with the city clerk and may be submitted at a general or special election.

### **Yakima**

*Initiative* – An ordinance may be initiated by a petition signed by qualified electors equal in number to 20 percent of the total number of votes cast at the last preceding general city election. The petition must be filed with the city clerk and the election may be at a special or general election.

*Referendum* – An ordinance may be referred to a referendum election if prior to its effective date a petition is filed signed by qualified electors equal in number to 10 percent of the entire vote cast at the last preceding general city election. It must be filed with the city clerk and submitted at a general or special election.

## Appendix N

Brief review of initiative and referendum powers of charter counties as established in their charters

### Clallam County

*Initiative* – A sponsor must submit the proposed ordinance to the county auditor for the petition to become registered. The sponsor has 90 days from the date of registration to collect the signatures of not less than 10 percent of the number of voters who voted in the last gubernatorial election. The county commissioners will call for a public hearing within 30 days after receipt of the proposed ordinance and, after the public hearing, the county commissioners have 30 days to adopt or reject the proposed ordinance. If rejected, then the commissioners must set a date for the election of the proposed ordinance and any possible substitute ordinance within 240 days of the rejection but not before 105 days after rejection.

*Mini-Initiative* – The process for a mini-initiative is the same set forth for an initiative but the sponsor need only get signatures of three percent of the number of those that voted in the last gubernatorial election in the county. The commissioners have 60 days to hold a public hearing on the proposed ordinance and have 30 days after the public hearing to adopt or reject the proposed ordinance in whole or in part.

*Referendum* – A sponsor may submit a petition for registration requesting the referral of an adopted ordinance to the people for acceptance or rejection in the form

of a referendum proposal. The proposed petition for registration must be within 10 days of the adoption of the ordinance that is the subject of the proposed referendum. Once the petition is registered, the ordinance referred to in the petition is suspended without force. The format for signatures is the same as for initiative and mini-initiative but the time allowed to gather the signatures of 10 percent of those that voted in the last gubernatorial election is 60 days instead of 90. The commissioners will then place the proposed referendum on the ballot for the next election but not before 45 days has elapsed since the petitions were validated.

*Referendum by the Commissioners* – The commissioners may, by ordinance, refer any proposed or adopted ordinance to the voters for their approval or rejection in the next regular or special election. If a proposed ordinance is approved by the majority of voters then it shall become effective 10 days after the election results are certified.

### Clark County

*Initiative* – Any registered county voter may file an initiative petition with the county auditor. Within 10 business days of the filing date, the prosecuting attorney must formulate a ballot title. The auditor then gives the proposed initiative an identifying number. Within 5 business days, the auditor must then confer with the initiative sponsor and establish the form and style of the initiative petition. The sponsor then has 120 days to collect valid signatures from registered county voters equaling no less than 10 percent of the number of votes cast in the county in the last gubernatorial election. The signatures must be submitted to the auditor no less

than 150 days before the date of the next general election. If a sufficient number of valid signatures has been submitted, the auditor then places the proposed initiative on the ballot for the next general election.

*Mini-Initiative* – An initiative proposal can be put directly to the county council if a sponsor gets the valid signatures of county voters totaling at least 3 percent of the number of votes cast in the county in the last gubernatorial election. The auditor has 30 business days to validate signatures. If a sufficient number of signatures is verified, the county council must hold a public hearing on the initiative petition within 60 days. After the hearing, the county council has 30 calendar days to enact, reject, or modify the proposed ordinance.

*Referendum* – Within 10 days after an ordinance is passed by the county council, a county voter may submit to the county auditor a referendum petition signed by 100 registered county voters against all or any portion of the ordinance. The auditor has 10 calendar days to verify the signatures. If 100 signatures are validated, the relevant portions of the ordinance are suspended. Within five business days, the auditor must confer with the referendum sponsor to review the proposal and give the referendum an identifying number. Within 10 business days, the prosecuting attorney must issue a title to the referendum. The sponsor then has 120 calendar days to collect valid signatures from county voters totaling no less than 10 percent of the total votes cast in the county in the last gubernatorial election. If the appropriate number of valid signatures was received by the auditor, the referendum is submitted to the voters at the next general election.

## **King County**

*Initiative* – Proposed ordinances may be enacted by initiative of the people if petitions bearing not less than 10 percent of the voters of the county that voted in the last election for county executive are filed with the county council. If sufficient, the council has 90 days to adopt the ordinance as petitioned or place the proposed ordinance on the ballot not less than 135 days after the petitions were filed. The council may also reject the proposed ordinance and adopt a substitute ordinance. Both ordinances are then placed on the ballot and the voters are given the choice of rejecting both or choosing one over the other.

*Referendum* – An ordinance may be subject to referendum if the ordinance petitions have signatures of no less than eight percent of voters in the county that voted in the last election for county executive, and they are filed prior to the effective date of the ordinance. The full text of the ordinance to be referred must be on each petition. If sufficient, the referendum will be put on the ballot at the next special or general election occurring more than 45 days after the petitions are filed.

*Institutional Initiative* – Any city or town within the county boundaries may, after securing consent by motion or resolution of at least half of the cities within the county, petition the council directly with a proposed ordinance. The proposed ordinance must have county-wide significance and be of a subject matter not already prohibited by referendum.

## **Pierce County**

*Initiative* – Any voter can propose an initiative to be filed with the filing officer. The filing officer must confer with the sponsor as to the form and style and the prosecuting attorney gives the initiative a ballot

title. The petitioner has 120 days to get the signatures of not less than 10 percent of the registered voters who voted in the last election for county executive. After the filing officer verifies the sufficiency of the signatures, the council can adopt the proposed ordinance without amendment or reject the ordinance and adopt a substitute ordinance. Both ordinances will then be put on the same ballot at the next general election not less than 120 days before validation.

*Referendum* – Any voter has 15 days after an ordinance is passed by the council to file a referendum proposal. The filing officer confers with the petitioner as to the style and form as well as give the referendum proposal a number. The prosecuting attorney then gives the referendum proposal a ballot title and petitioner has 120 days to gather signatures of at least eight percent of the registered voters in the last election for county executive. The filing officer verifies the sufficiency of the signatures and submits the measure to the people in the next general election not less than 120 days after validation.

### **Snohomish County**

*Initiative* – An initiative proposal must be filed with the officer charged with holding elections. The prosecuting attorney then drafts the ballot title and the filing officer confers with the petitioner to review and establish the form and substance of the petitions. The petitioner has 90 days to collect the signatures of at least seven percent of the registered voters who voted in the last gubernatorial election. If the sufficiency of petitions is validated then the proposal will be submitted to the people not less than 60 days after validation. Or the council can adopt the proposed ordinance without change or adopt a substitute

ordinance. If a substitute ordinance is adopted then both ordinances will be put on the ballot for the voters.

*Mini-Initiative* – An initiative proposal can be put directly to the council if a sponsor gets the signatures of at least three percent of the voters in the last gubernatorial election. The council then holds a public hearing on the proposed ordinance and can enact, reject, or modify the proposed ordinance within 30 days.

*Referendum* – Within 10 days after an ordinance is passed by the council, a voter may submit a referendum petition with at least 100 signatures of those that are opposed to the ordinance with the filing officer. After the form and style of the petitions is confirmed and the ballot title is issued, the petitioner has 45 days to get the signatures of at least five percent of the number of votes that voted in the last gubernatorial election. After validation of the petitions the measure is put to the voters in the next general election not less than 60 days from the time the petitions are validated.

### **San Juan County**

*Initiative* – Any voter or organization of voters may file an initiative proposal with the county auditor. After the form and style of the petitions are reviewed and the initiative is given a ballot title by the prosecuting attorney, then the petitioner has 120 days to collect the signatures of at least 15 percent of the number of votes in the county from the last gubernatorial election. After the sufficiency of the petitions is verified the measure is to be put to the voters at the next general election not less than 120 days after validation of the petitions. The council can adopt the initiative measure without change or adopt a substi-



tute measure concerning the same subject matter and both will be put on the ballot.

*Mini-Initiative* – Any voter can propose an ordinance to the council if they collect at least 3 percent of the number of qualified voters who voted in the last gubernatorial election. The council will then hold a public hearing and has 60 days to enact or reject the proposed ordinance.

*Referendum* – Any voter has 45 days after an ordinance is passed by the council to file a referendum proposal. After the form and style of the petitions is reviewed by the auditor and the prosecuting attorney gives the proposal a ballot title, the petitioner has 120 days to collect the signatures of registered voters of the county not less than 15 percent of those that voted in the last gubernatorial election. If the sufficiency of the petitions is verified, the proposal will be submitted to the voters at the next general election not less than 120 days after verification.

### **Whatcom County**

*Initiative* – Any voter may file an initiative proposal with the county auditor. After the form and style of the petitions are reviewed and the initiative is given a ballot title by the prosecuting attorney, then the petitioner has 120 days to collect the signatures of at least 15 percent of the number of votes in the county from the last general election. After the sufficiency of the petitions is verified the measure is to be put to the voters at the next general election not less than 120 days after validation of the petitions. The council can adopt the initiative measure without change or adopt a substitute measure concerning the same subject matter and both will be put on the ballot.

*Mini-Initiative* – Any voter can propose an ordinance to the council if they collect at least 3 percent of the number of qualified voters who voted in the last gubernatorial election. The council will then hold a public hearing and has 60 days to enact or reject the proposed ordinance.

*Referendum* – Any voter has 45 days after an ordinance is passed by the council to file a referendum proposal. After the form and style of the petitions is reviewed by the auditor and the prosecuting attorney gives the proposal a ballot title, the petitioner has 120 days to collect the signatures of registered voters of the county not less than 15 percent of those that voted in the last general election. If the sufficiency of the petitions is verified, the proposal will be submitted to the voters at the next general election not less than 120 days after verification.